Chatham House Report

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Cover image: A banner marking the first anniversary of Russia's illegal annexation of Crimea is hung during a plenary session of Ukraine's parliament, the Verkhovna Rada, in Kyiv on 6 March 2015. The banner reads, 'Crimea is Ukraine'.
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Executive Summary

Four years since the start of its 'Euromaidan' revolution, Ukraine is fighting for its survival as an independent and viable state. Ukrainians took to the streets in late 2013 in protest at their government's suspension, under pressure from Russia, of plans for a closer relationship with the European Union. While their activism forced President Viktor Yanukovych from power and heralded a more EU-aligned foreign policy under a new government, it also prompted a hostile response from Russia, which annexed Crimea in early 2014, started a territorial conflict in eastern Ukraine, and continues to try to fragment and enfeeble its neighbour.

This report is partly about Ukraine's struggle to hold together and resist Russia's interference and pressure – in the military, diplomatic, economic and media spheres. But it is also about a related internal contest to determine the political, institutional and civic future of Ukraine. In broader terms the Euromaidan was a response as much to poor domestic governance and corruption as to thwarted ambitions for European integration *per se*. In this context, the 'struggle' in the title of this report refers to the challenges of internal reform – challenges which pit, broadly speaking, modernizing forces sympathetic to European norms against the entrenched conservatism of vested interests in political and business elites. Fending off Russia and delivering on policy reforms in a wide range of areas (including those related to European integration) are the two defining challenges that Ukraine faces today.

Ukraine's future and fate hinge upon a transformation of the relationship between citizens, the economy and the state

This report recognizes Ukraine's considerable achievements since the Euromaidan. The country has not succumbed, despite grievous loss of life and territory, to Russian military aggression. It has sealed a landmark Association Agreement with the EU, opening up economic opportunity and making it clear that it sees itself as a fundamentally 'European' country rather than a Russian satellite or tributary. And it has undertaken deeper and more extensive reform in the past four years than in the previous 22 of its post-Soviet life. This has included efforts to challenge a deep-seated culture of corruption and rent-seeking, improve public-sector transparency, and reduce risks to financial stability and economic distortions in the energy sector. Civil society's contribution to many of these endeavours has been crucial. Ukraine's future and fate hinge upon a transformation of the relationship between citizens, the economy and the state. Both national security and political legitimacy are at stake.

While acknowledging Ukraine's accomplishments, this report forensically scrutinizes those areas in which the leadership is failing to live up to the expectations of its own people, or to meet its new commitments under the EU Association Agreement. Resistance to reform remains widespread even among those in high office, and there are recent signs that anti-progressive forces are becoming emboldened in their attempts to block or dilute the policies Ukraine needs to develop its economy, establish a truly independent judiciary and provide meaningful deterrents to corruption.

The West's credibility and cohesion are also at stake. The international community has invested heavily in Ukraine's future and spent billions of dollars on supporting the country, while rejecting the Russian claim to primacy in deciding Ukraine's geopolitical alignment and domestic political arrangement. This report puts forward recommendations to ensure credibility is retained (or strengthened) through adherence to the principles of the post-Cold War order, and through strictly conditional financial assistance.

Ukraine's principal challenges

1. Security and defence

Despite three-and-a-half years of multi-variant war against Russia and its separatist allies, Ukraine has demonstrated an internal robustness that few predicted in 2014. Thus far, its sense of national purpose has been humbled neither by Russian arms nor by Ukraine's unscrupulous system of power, which continues to arouse widespread dissatisfaction among Western allies and its own population. The West has provided critical support in four areas: diplomacy, anti-Russian sanctions, economic and reform assistance, and defence cooperation. Although these efforts have produced some dividends, more can be done in the political and defence spheres without inordinate expense or political risk. Worries that the West will succumb to 'Ukraine fatigue' or the lure of 'grand bargains' with Russia have not been borne out. Thus far, the policies of the US administration under President Donald Trump have been impressively staunch.

Nevertheless, much of what Ukraine has achieved is susceptible to reversal, and underlying political conditions are far from healthy. Ukraine's core security objectives depend on national cohesion, wise allocation of resources and a long-term commitment by state and society alike. Neither Ukraine's own resistance nor Western steadfastness has dislodged Moscow's perceptions that Ukraine is an extension of the homeland and a tool of Western efforts to enfeeble Russia and overthrow its regime. Russia's tenacity and adaptability should not be underestimated. The appearance of stalemate in the parts of Ukraine's eastern region of Donbas occupied by pro-Russian separatists – who have established autonomous quasi-republics of dubious legitimacy – should not divert attention from other means that Russia is employing to sabotage and 'reset' the Ukrainian state. It is an illusion to believe that diplomatic formulas alone will diminish Russia's determination to dominate Ukraine and rid it of meaningful Western influence. Russia's calculations will change only when core elites perceive that a continuation of the present course is no longer feasible.

2. Reforms

EU integration

The conclusion of the EU's Association Agreement offers the promise of a sea-change in Ukraine's relations with Europe

The Euromaidan revolution and the conclusion of the EU's Association Agreement offer the promise of a sea-change in Ukraine's relations with Europe. Signed in 2014, and ratified in 2017, the Association Agreement has both political and economic components, the latter formalized in a Deep and Comprehensive Free Trade Agreement (DCFTA) that boosts Ukrainian access to the EU single market but requires substantial policy reforms in return.

The EU has significantly stepped up its assistance to Ukraine. Brussels is involved in almost every aspect of reforms. The EU's Support Group for Ukraine (SGUA) plays a strategic coordination role, matching domestic demand for expertise and assistance with their supply. However, at the operational level, EU assistance is still delivered via a large number of classic technical assistance projects, which are known for their ineffectiveness both in Ukraine and in other developing countries. The EU has an unprecedented political mandate for driving reforms forward in Ukraine. However, it has been too timid to use this mandate, and thus risks losing the trust of reformers.

A further problem is that many members of Ukrainian political elites still regard reforms as optional, often merely paying lip service to fundamental reforms of the state and

implementation of the Association Agreement. There is no single decision-making centre in Ukraine on matters related to European integration, nor is there effective coordination. The EU has been too lenient with the Ukrainian authorities, continuously giving them the 'benefit of the doubt'. The EU is unwilling to risk triggering a change of government which could lead to more populist and/or pro-Russian forces gaining more power. Where meaningful reforms have occurred, they have been championed by numerous ad hoc 'reform coalitions' consisting of politicians, state officials, civil society groups, and EU officials and experts – albeit in the face of strong resistance from reform spoilers. The activism of progressive coalitions is welcome, but on its own it does not provide a sound basis for institutional transformation.

Economic reforms

Of all the areas in which Ukraine needs reform, economic policy is one of the most critical. It is commonly argued by investors and observers that Ukraine is un-reformable, and that it should be left in the 'twilight zone' between East and West, as was the case for much of the first 20-odd years of its independence. This view ignores the reality that the status quo was failing the bulk of Ukraine's population, with the exception of a few hundred business tycoons with privileged access to the political system and members of political elites who used the system to personal advantage. The Euromaidan revolution was, at its heart, a rejection of this corrupt system and a demand for the creation of an economy and society based on Western and European norms.

The Euromaidan revolution was, at its heart, a rejection of Ukraine's corrupt system and a demand for the creation of an economy and society based on Western and European norms

Policy developments since 2014, while sometimes failing to meet expectations for revolutionary change, have nonetheless been encouraging. Ukraine has proven that change is possible. Basic macroeconomic stability has been achieved, with the economy returning to growth in real terms in 2016, inflation easing, the hryvnia strengthening and foreign exchange reserves more than tripling from the lows of 2015. The current-account and fiscal deficits have been cut to manageable proportions. Budget spending has been reduced and rationalized, tax reform and debt restructuring rolled out.

The energy sector has been a priority for reform. Energy prices have been hiked to cut demand and fuel subsidies are now more targeted; this has cut the public-sector deficit in respect of Naftogaz, Ukraine's state-owned oil and gas company, to zero in 2017. The banking sector has also undergone far-reaching change, with almost half the banks closed and others cleaned up sufficiently to ensure that the sector no longer imposes a large contingent liability on the public finances. The National Bank of Ukraine has also undergone remarkable internal reform, with the result that the central bank is now fit for purpose in terms of managing monetary and exchange rate policy and regulating and supervising the banking sector. With the country's macroeconomic and financial resilience apparently improved, the next challenge is to enhance the business environment, unlock the potential of the land market and support investment to deliver much-needed economic growth.

Democratization and governance

Reform of Ukraine's over-centralized, excessively regulated and dysfunctional system of governance has started. Large amounts of legislation have been enacted, though in many cases not yet fully implemented. Decentralization has devolved significant authority and tax-raising powers to local governments, but reform of the constitutional division of powers, institutional (especially civil service) capacity and the media has barely begun. Establishment of robust protections and enforcement of the rule

of law through judicial reform, the essential underpinning of good governance, is meeting stiff resistance from political and economic groups that currently benefit from privileged access to power.

The president shares power with the government, and both rely on shifting support from other political parties. The agenda is often set by populist parties, and vested interests are still entrenched. This results in damaging institutional rivalry and corruption of the democratic process. Ukraine has a relatively good record of mostly free and fair elections since 2004. The October 2014 legislative election greatly reduced the influence of the Donbas elite, bringing in many new members of parliament who are pressing for reform. The resistance they encounter testifies to the degree of change that has already occurred – though also to the gravity of the challenges that persist. Electoral reform, crucial to the establishment of a more level playing field, is seriously delayed.

Human capital and civil society

The Euromaidan movement empowered citizens and started a consolidation of civic identity in Ukraine around justice, accountability and an anti-corruption agenda. Subsequent Russian aggression provided a powerful bond for Ukrainians to unite around the idea of Ukrainian nationhood.

Ukrainian civil society has reason to be proud of what it has accomplished to date. Unlike in the aftermath of the 2004–05 Orange Revolution, society is no longer immobilized in a post-protest phase. Concerted effort at the national level, the presence of reformers in the government, an inflow of substantial Western assistance with strong conditionality, and an episodic power vacuum after the Euromaidan have enabled active citizens to contribute to Ukraine's transformation. An important democratizing effect of civil society has been the integration of non-state trust networks into public politics. Most prominent has been the launch and institutionalization of ProZorro, a new digital public procurement mechanism. Its success has established a new norm of transparency in terms of citizens being able to hold the state to account.

Inadequate channels exist for civil society organizations to listen to citizens' concerns and transmit these to the authorities

However, the dynamism of civil society continues to depend on a small cohort of activists and professional civil society organizations (CSOs). As the 'old' system of entrenched interests mounts its defences, the persistence of a gap between organized advocacy and concerned citizens reduces the scope for reform pressure from grassroots level. Indeed, the increasing mobilization of populist and radical groups testifies to the continuing weaknesses of civil society, and to the popular frustrations this generates. Inadequate channels exist for CSOs to listen to citizens' concerns and transmit these to the authorities. As a result, there is a sense that CSOs are disconnected from local communities, and that activity on *behalf of* citizens rather than *with* citizens prevails.

Anti-corruption reforms

Over the past four years, Ukraine has made significant progress in laying the foundations for reducing very high levels of public corruption. However, this is only the start of a long-term process that needs to address two principal problems: first, a fatalistic acceptance by much of society of endemic corruption; and second, a concentration of ownership and influence that has prevented the development of the rule of law. These problems are far from unique to Ukraine, but their accumulation over more than 25 years of 'state capture' presents an extraordinary challenge for the country's reformers.

The most notable reform achievements since 2014 have been the elimination of gas sales from Russia (previously the largest source of corruption in the economy), which has shrunk the space in which corrupt practices can occur; and improved public-sector transparency as a result of the above-mentioned introduction of an electronic system for state procurement tenders. An intrusive new e-declaration system through which senior officials must declare their assets marks another victory for anti-corruption reformers.

However, the new agencies established to investigate and prosecute high-level official corruption – the National Anti-Corruption Bureau of Ukraine (NABU) and the Specialized Anti-Corruption Prosecutor's Office (SAPO) – have yet to deliver results. This largely reflects the lack of a robust judicial system. Judicial reform remains the Achilles heel of the anti-corruption effort as a whole. It is clear that Ukraine's current leaders may fear an independent judiciary and the effective enforcement of laws. Not surprisingly, a fierce battle is under way between genuinely reformist forces and those who would like to preserve as much as possible of the 'old' system.

Recommendations

To strengthen security

- The West's goal must be to ensure that Ukraine has the capacity to preserve its independence and territorial integrity, irrespective of Russian wishes or intentions. In this collective undertaking, Ukraine bears primary responsibility and must shoulder the principal burden. This requires political will and demonstrable progress in upholding standards of good governance in key security and political institutions.
- Ukraine must understand that internal transformation is a prerequisite both to national security and to Euro-Atlantic integration. The establishment of an effective, trusted and accountable state is a primary national interest. Unless law enforcement, security and defence institutions are fit for purpose, the country will remain dangerously vulnerable to infowar, penetration, sabotage and destabilization.
- NATO and the EU should, respectively, launch security sector and law enforcement advisory programmes in Ukraine, commensurate with NATO's existing efforts in the defence sphere.
- There is no contradiction between dialogue and defence. The West must work inside and outside the Normandy Format and Minsk process to resolve the conflict between Ukraine and Russia and strengthen European security. The Minsk agreements of 2014 and 2015 – which aimed to establish a political solution – should not be abandoned, but deadlock should not become a pretext for diluting their core provisions: a comprehensive ceasefire, the withdrawal of foreign forces and heavy weapons from occupied territories in Donbas, and unimpeded access for monitors from the Organization for Security and Co-operation in Europe (OSCE). Verified implementation of these security components must precede implementation of the political segment of the Minsk protocols.

- The West's sanctions against Russia should be periodically reviewed, strengthened where necessary, and kept in place however long the illegal annexation of the Crimean peninsula lasts and destabilization of the east of the country continues. Full restoration of Ukraine's internationally recognized borders should not be compromised.

To advance EU integration

- The EU must have realistic expectations of how long it will take for Ukraine to reform. The EU must maintain strong conditionality in the long term to stimulate real, rather than partial or cosmetic, reforms. Ukraine must recognize that European integration is impossible without delivery of political and economic transformation.
- The EU's Support Group for Ukraine (SGUA) has been a particularly successful innovation in policy towards Ukraine. The SGUA has matched the supply of expertise to need. The EU should rely on this tailored and agile mechanism when planning assistance for Ukraine.
- The EU's support should move away from classic, pre-scripted technical assistance projects – the effectiveness of which is very low – to tailored, more flexible and longer-term programmes of at least four to five years in duration. The EU should consider using some instruments that have been successfully deployed in Romania (and learn lessons from failure in Bulgaria) to support the rule of law and judicial reforms.
- Support for Ukrainian businesses, especially small and medium-sized enterprises, is needed to help them withstand competitive pressures once the DCFTA transition periods finish. This gap remains a major weakness in the EU's strategy towards Ukraine (especially at the regional level), and contrasts with the support available to EU accession candidate countries.

To boost economic and political reform

- Land reform – allowing and facilitating a functioning market for land – is badly needed to ensure that Ukraine's large but low-productivity agricultural sector is a powerhouse for longer-term economic growth. There are indications that the Ukrainian government will partially lift a moratorium on land sales by the end of 2017.
- Further reform of Ukraine's more than 3,000 state-owned enterprises is essential. Efforts should focus on three areas: improving the corporate governance of strategic entities identified as likely to remain in state ownership; privatizing the remaining enterprises and assets for which there is a ready market; and closing the rest. Reform should also include the sale of over 10 million hectares of agricultural land currently in state ownership, which could potentially raise big sums for the state budget.
- Civil society and the international community should place as much stress on electoral and institutional reform as on anti-corruption measures, to encourage a break with the old system and allow a new generation of genuine reformers to shape laws and policies. Wider use of institutional exchanges between

Ukrainian government entities and EU member state governments will encourage best practice in administration and better policy formulation and implementation.

- Building public trust is of critical importance. Responsibility for this lies first and foremost with the Ukrainian political class, which needs to convince the population and Ukraine's foreign friends and partners that there is serious political will to reform the corrupt political system. Civil society can help to do this 'from the top', by joining forces with reformers in the legislature and executive. Civil society also needs to work from the 'bottom up' to ensure that citizens can engage in their country's governance and exercise civic oversight. Active citizenship could help establish a larger and more reformist political class in the future. Unless Ukrainian politicians, judges and civil servants accept the need for their system to change fundamentally – through the creation of robust institutions, genuine safeguards against corruption, and true political and legal accountability – old habits will continue, Western partners will grow weary, and Russia will continue to be able to undermine the country's territorial integrity, politics and future sustainability.
- Western donors should integrate requirements for wider popular participation into their grant-making. They should fund projects that build civic support networks. They should promote action-based rather than adversarial revolutionary activism. The expansion of housing associations, farmers' unions, credit unions, teachers' associations and business associations would make decentralization of power more effective and local government more accountable.
- Through international development assistance, Western partners must assist Ukrainian NGOs and nascent political parties, as well as universities and management schools, in the creation of a new political and managerial class.
- Western countries must sustain pressure for judicial reform and the prosecution of high-level officials who have abused their office. There must be continued pressure for progress towards zero tolerance of corruption at all levels. The establishment of a special trial court or chamber free from political interference is essential for further progress in the battle against corruption and the development of a new legal culture. The appeal system must be similarly independent. Any signs of backtracking on these issues must be addressed robustly. An independent judiciary is the ultimate test of Ukraine's reforms.
- To maintain the momentum of the anti-corruption effort, the government must speed up privatization of state-owned enterprises using transparent tender procedures. Further deregulation should also be a high priority, in order to reduce opportunities for officials to extort money from business.
- Ukraine's anti-corruption reformers must communicate their achievements to society and address the perception that 'nothing has changed' since 2014. Important progress has been made on reducing the space for corruption, but the Ukrainian public is generally not aware of these changes.

Incomplete reforms threaten to undermine the credibility of 'new forces' and lead to the disillusionment of millions of Ukrainians

Progress in Ukraine is clearly discernible on many fronts, but it is in danger. Incomplete reforms threaten to undermine the credibility of 'new forces' and lead to the disillusionment of millions of Ukrainians. This would open the way for revanchist and populist forces to hijack Ukraine's transformation agenda. Delivering on the policy recommendations proposed above would pave the way for a more open and efficient system of governance and make Ukraine more resilient.

A Western policy of benign neglect or, worse, accommodation with Moscow at Ukraine's expense would seriously destabilize the country, as it remains fragile and in peril. The evidence presented in this report makes clear the double existential threat Ukraine is facing. But it also makes the strongest possible case for increased Western support, despite – perhaps even because of – Europe's myriad other problems. Policymakers have less capacity to invest time and effort in Ukraine, but the West cannot afford yet another defeat. Vladimir Putin's objectives show no signs of changing, and neither should those of the West. All is still to play for, with Ukraine 'on the edge' in every sense.

Резюме дослідження

Упродовж чотирьох років, відколи спалахнув Євромайдан, Україна бореться за своє існування як незалежна і життєздатна держава. Українці вийшли на вулиці наприкінці 2013 року, щоб висловити протест проти затягування урядом – під тиском Росії – процесу зближення з Європейським Союзом. Завдяки спротиву громадян вдалося усунути від влади президента Віктора Януковича і домогтися повернення до євроорієнтованої зовнішньої політики під керівництвом нового уряду, на що Росія відреагувала вороже, анексувавши на початку 2014 року Крим і розгорнувши територіальний конфлікт на Сході України. Вона і досі не полишає спроб розділити та ослабити свого сусіда.

Майбутнє України та її доля в цілому залежить від подальшої трансформації відносин між громадянами, економікою та державою

У цьому звіті йдеться не лише про боротьбу України за єдність та її спротив втручанню і тиску Росії – у військовій, дипломатичній, економічній та інформаційній сферах. Багато уваги присвячено внутрішньому протистоянню, що визначає політичне, інституційне та суспільне майбутнє України. У ширшому розумінні Євромайдан став відповіддю як на бездарне внутрішнє державне управління та корумпованість, так і на перешкоди, що виникли на шляху євроінтеграції. У цьому контексті «боротьба» в назві цього звіту стосується внутрішніх реформ – важливих викликів, що стали каменем спотикання між силами, котрі прагнуть модернізації на основі європейських норм, та представниками закостенілого консерватизму, які представлені як у владній та і бізнес-елітах. Нині перед Україною стоять два основні завдання: дати відсіч Росії та закінчити реформування багатьох галузей (включно з євроінтеграційним напрямком).

У цьому звіті перелічено всі значні досягнення України з часів Євромайдану. Незважаючи на тяжкі людські втрати, а також захоплення території, Україна вистояла перед російською військовою агресією. Вона підписала доленосну Угоду про асоціацію з Європейським Союзом, відкриваючи для себе нові економічні можливості й наголошуючи таким чином, що в майбутньому бачить себе принципово європейською державою, а не сателітом Росії чи підлеглою їй територією. Крім того, упродовж останніх чотирьох років було проведене значно глибше реформування, ніж за останні 22 роки незалежності. Знадобилося чимало зусиль, щоб подолати глибоко вкорінену корупцію та зокрема хабарництво, зробити діяльність державного сектора прозорішою та зменшити ризики для фінансової стабільності й економічних зловживань в енергетичному секторі. Внесок громадянського суспільства в цю справу був вирішальний. Майбутнє України та її доля в цілому залежить від подальшої трансформації відносин між громадянами, економікою та державою. На кін поставлено і національну безпеку, і політичну легітимність.

Утім, поряд із визнанням усіх здобутків України, в цьому звіті детально розглянуто сфери, де влада не виправдовує сподівань народу або ж не виконує зобов’язань, що випливають з Угоди про асоціацію з Європейським Союзом. Реформам досі опираються навіть на найвищих щаблях влади. Крім того, наявні ознаки того, що противники прогресу докладають щодалі більше зусиль до блокування або ж послаблення курсу, який Україна повинна впровадити задля розвитку економічної сфери, встановлення справді незалежного судочинства та значного зниження рівня корупції.

На карту поставлено також довіру та єдність західних країн в українському питанні. Міжнародна спільнота суттєво доклалася до майбутнього України, інвестуючи в неї мільярди доларів і водночас відкидаючи зазіхання Росії на першість у визначенні місця України в геополітичній розстановці сил

та внутрішньополітичній ситуації. Тут подано рекомендації, дотримання яких сприятиме збереженню (або ж зміцненню) репутації західних партнерів: чітке виконання правил, встановлених після Холодної війни, і суворе дотримання умов надання міжнародної фінансової допомоги.

Основні виклики України

1. Безпека і оборона

Упродовж трьох із половиною років, відколи почалася багатовимірна війна проти Росії та її поплічників-сепаратистів, Україна виявила таку внутрішню силу, яку мало хто міг спрогнозувати в 2014 році. Національну ідею досі не вдалося зламати ані російській зброї, ані корупційній системі влади, діями якої обурені й західні союзники, і самі українці. Захід надав необхідну допомогу в чотирьох сферах: дипломатія, санкції проти Росії, економічне сприяння і підтримка реформ та співпраця в галузі оборони. Попри те, що всі ці зусилля принесли свої плоди, в політиці та обороні можна було б досягти значно більшого без невиправданих витрат і політичного ризику. Побоювання, що Захід впаде у стан “втоми від України” або ж спокуситься на «велику домовленість» з Росією, не виправдалися. Непохитна послідовність США у політиці з боку адміністрації президента Дональда Трампа вражає.

Підписання Угоди про асоціацію з Європейським Союзом віщує радикальні зміни у відносинах України та Європи

Утім, більшість позитивних змін в Україні не назвеш незворотними, а політичний клімат – здоровим. Досягнення основних цілей у сфері безпеки залежить від згуртованості народу, мудрого розподілу ресурсів і готовності довго й багато працювати заради цього – як владі, так і суспільству. Ні опір України, ні непохитність західних країн не змусили Москву відмовитися від думки про те, що Україна є «продовженням» Росії та водночас знаряддям у руках Заходу, що прагне її ослабити і скинути чинну владу. Не слід недооцінювати наполегливості та здатності Росії пристосовуватися. Ситуація на Донбасі, частково окупованому проросійськими сепаратистами, котрі незаконно проголосили кілька автономних квазіреспублік, зайшла в глухий кут, однак у жодному разі не слід втрачати пильності, адже Росія використовує інші засоби для «підриву та перезавантаження» України як держави. Віра в те, що за допомогою самої лише дипломатії вдасться змусити Росію відмовитися від зазіхань на Україну та послабити її намір нівелювати західний вплив – ілюзія. Плани Росії зміняться лише тоді, коли владна еліта збагне, що діяти, як раніше, уже неможливо.

2. Реформи

Євроінтеграція
Євромайдан та підписання Угоди про асоціацію з Європейським Союзом віщують радикальні зміни у відносинах України та Європи. Угода про асоціацію, підписана 2014 року та ратифікована 2017-го, має і політичну, й економічну складову. Саме економічні аспекти співпраці прописані в угоді про Поглиблену та всеохоплюючу зону вільної торгівлі (ПВЗВТ), що відкриває Україні доступ до єдиного ринку ЄС, вимагаючи натомість впровадження значних реформ.

Євросоюз істотно збільшив обсяг допомоги Україні. Брюссель долучається практично до кожного аспекту реформування. Група підтримки України Європейської комісії (ГПУЄК) відіграє стратегічну роль з координації, а також визначення внутрішніх потреб і способів їх задоволення, зокрема, шляхом експертної оцінки і безпосередньої допомоги. Утім, на робочому рівні підтримка з боку ЄС досі надходить через численні проекти технічної допомоги, неефективність яких доведена як в Україні, так і в інших країнах, що розвиваються. В Україні ЄС має безпрецедентні повноваження для форсування реформ. Проте Євросоюз доволі боязко натискає на важелі впливу, що може призвести до втрати довіри реформаторів.

Окрім того, чимало представників української політичної еліти досі трактують реформи доволі формально, обмежуючись створенням видимості фундаментальних змін та імплементації Угоди про асоціацію. В Україні немає ані єдиного центру, що займався би прийняттям рішень щодо євроінтеграції, ані дієвої координації. Євросоюз був надзвичайно поблажливий до української влади, знову і знову надаючи їй кредит довіри. ЄС не хотів би запустити ланцюгову реакцію, що надалі – могла б призвести до зміни уряду, оскільки в такому разі владу можуть обійняти популістські та/або проросійські сили, котрі саме набирають обертів. Усі справді значні реформи відбулися завдяки численними ситуативним «коаліціям», до яких долучалися політики, чиновники, представники громадянського суспільства, посадовці та експерти з ЄС, – але все ці зміни відбулися за умов значного спротиву противників реформ. Звісно, прогресивні коаліції – це краще, ніж нічого, але сама по собі така діяльність не може бути підґрунтям для інституціональних перетворень.

Суттю Революції гідності стало прагнення зламати стару корупційну систему і вийти на такий економічний і соціальний рівень, що відповідав би західним та європейським нормам

Економічні реформи

З-поміж усіх галузей, що потребують реформ, економічна політика України є однією з найважливіших. Інвестори та спостерігачі неодноразово наголошували на тому, що Україна взагалі не підлягає реформуванню і тому повинна залишатися в «сірій зоні» між Сходом і Заходом, як це було всі двадцять з гаком років її незалежності. Такий погляд нехтує інтересами всього народу України, окрім кількасот бізнес-магнатів із привілейованим доступом до політичної системи та представників влади, що неабияк наживалися, використовуючи систему на власну користь. Ядром Революції гідності стало прагнення зламати стару корупційну систему і вийти на такий економічний і соціальний рівень, що відповідав би західним та європейським нормам.

Зміни в політиці, яких вдалося досягти після 2014 року, хоч і не завжди відповідали високому рівню революційних вимог, утім вселяли надію. Україна довела, що може змінитися. Було досягнуто базової макроекономічної стабілізації, у 2016 році економіка почала реально зростати, рівень інфляції знизився, гривня зміцнилася, валютні резерви збільшилися втричі порівняно з 2015 роком. Поточні рахунки і дефіцит бюджету вдалося привести до прийнятного стану. Було зменшено і раціоналізовано бюджетні витрати, а також розроблено план проведення податкової реформи і реструктуризації боргів.

Енергетичний сектор також був пріоритетом реформ. Уряд підняв ціни на енергоресурси, щоб зменшити попит. Субсидії на пальне тепер мають цільове призначення, завдяки чому державній компанії Нафтогазу України у 2017 року вдалося зменшити дефіцит у державному бюджеті до нуля. Банківський сектор

також зазнав масштабних змін: майже половину банків було закрито, інші суттєво «підчистили» з метою уникнення потенційних державних фінансових зобов'язань. У Національному банку України (НБУ), головному банку країни, також було проведено важливу внутрішню реформу, завдяки якій НБУ відтепер зможе впроваджувати адекватну кредитно-грошову і валютну політику, а також здійснювати нагляд у банківському секторі. На черзі після очевидного покращення макроекономічної та фінансової ситуації в Україні стоїть покращення середовища для ведення бізнесу, розкриття потенціалу ринку землі та підтримка інвестицій, що сприятиме так необхідному економічному зростанню.

Демократизація та управління

Реформування української надто централізованої та зарегульованої системи державного управління, що насилу функціонує, розпочалося. Було ухвалено чимало законів, однак на практиці їх норми виконуються ще не повністю. Завдяки децентралізації місцева влада отримала розширені повноваження і можливість самостійно стягувати податки, однак реформування конституційного розподілу влади, інституцій (особливо державної служби), а також ЗМІ заледве почалося. Політичні та економічні групи, що досі мали привілейований доступ до влади, чинять жорсткий опір на шляху встановлення верховенства права та проведення судової реформи, а також закладення підвалин ефективного державного управління.

Влада розподілена між президентом і урядом, які, у свою чергою, залежать від мінливої підтримки політичних партій. Тон часто задають популісти, тоді як вплив бізнес-груп залишається незмінним. Це призводить до нездорової конкуренції між гілками влади та проникнення корупції до демократичного процесу. З 2004 року Україна показує доволі непоганий результат, проводячи достатньо вільні й чесні вибори. Після виборів у жовні 2014 року вплив донецької еліти значно послабився, адже до складу парламенту увійшли нові депутати, котрі всіляко просувють реформи. Опір, що їм чинять, свідчить не лише про значущість змін, які вже відбулися, а й про серйозність нових викликів. Усіляко відтягується реформа виборчого законодавства, яка повинна забезпечити рівні умови для всіх учасників політичного процесу.

Громадянське суспільство

Завдяки Євромайдану суспільство, що відчуло свою силу, розпочало консолідацію на основі цінностей верховенства права, підзвітності влади та боротьби з корупцією. Водночас під тиском російської агресії українці згуртувалися навколо ідеї української державності.

Українське громадянське суспільство має всі підстави пишатися своїми нинішніми здобутками. Після Євромайдану суспільство вже не було таке паралізоване, як після Помаранчевої революції 2004–2005 років. Злагоджені зусилля на національному рівні, наявність в уряді реформаторів, наплив значної фінансової допомоги з боку Заходу з жорсткими умовами фінансування, а також епізодичний вакуум влади, що утворився після Євромайдану, дозволили активним громадянам долучитися до перетворень в Україні. Важливою складовою демократизації стала інтеграція нових напрацюваннь неурядових мереж у державні інститути. Одним з найбільших досягнень є запуск та інституалізація ProZorro – системи публічних електронн

их закупівель. Завдяки успіху цієї платформи було встановлено новий стандарт прозорості та підзвітності держави перед громадськістю.

Бракує каналів комунікації між громадянами та громадськими організаціями, які б дозволяли консолідувати бачення громадян та в подальшому транслювати це бачення неверх до органів влади

Утім, динамізм громадянського суспільство в цілому тримається на невеликій групі активістів та професійних неурядових організацій. У той час як «стара система», підвладна групам інтересів посилює оборону, відірваність небайдужих громадян від адвокаційної діяльності громадських організацій послаблює тиск на реформи знизу. Щодалі помітніша мобілізація популістських та радикальних груп свідчить про вразливість громадянського суспільства, а це, своєю чергою, породжує розчарування. Бракує каналів комунікації між громадянами та громадськими організаціями, які б дозволяли консолідувати бачення громадян та в подальшому транслювати це бачення неверх до органів влади. Складається враження, що громадські організації відокремлені від місцевих громад, тому діють радше *від імені* громадян, аніж *разом* із ними.

Антикорупційні реформи

Упродовж останніх чотирьох років Україна досягла неабиякого прогресу на шляху зменшення надзвичайно високого рівня корупції. Утім, закладення підвалин – це лише початок тривалої роботи, що має на меті розв’язання двох важливих проблем: по-перше, йдеться про фаталістичне сприйняття повальної корупції, а по-друге – неможливість встановлення верховенства права через зосередження влади і майна в руках невеликої групи осіб. Ці проблеми для України не нові, однак за понад 25 років врядування в інтересах кількасот бізнес-магнатів набули такого масштабу, що стали для реформаторів дуже серйозним викликом.

Найвизначнішим досягненням у цій сфері після 2014 року стала майже повна відмова від постачання газу з Росії (раніше найбільш корумпована галузь економіки), що автоматично звузило коло можливостей для корупційних оборудок. Крім того, завдяки впровадженню описаної вище системи публічних електронних закупівель, діяльність державного сектора стала прозорішою. Ще однією перемогою борців із корупцією став запуск нової системи електронної подачі декларацій, за допомогою якої високопосадовці зобов’язані декларувати свої статки.

Утім, нові інститути, створені для розслідування та покарання випадків корупції серед високопосадовців (Національне антикорупційне бюро НАБУ та Спеціалізована антикорупційна прокуратура), ще мають довести результативність своєї роботи, що здебільшого гальмується через відсутність надійної судової системи. Судова реформа залишається ахіллесовою п’ятою всієї антикорупційної діяльності. Очевидно, що нинішня українська влада може побоюватися незалежного судочинства і суворого дотримання законів. Тож не дивно, що між справжніми реформаторами і тими, хто зацікавлений у збереженні «старої системи», точиться жорстока боротьба.

Рекомендації

Зміцнення безпеки

- Мета Заходу – допомогти Україні захистити свою незалежність і територіальну цілісність – незалежно від бажань та намірів Росії. У цій спільній роботі основна відповідальність і найбільший тягар лягають

саме на плечі України. Для її виконання потрібна політична воля і помітний прогрес у дотриманні стандартів належного врядування в ключових установах, що займаються сферою безпеки і політикою.

- Україна мусить усвідомити, що внутрішнє перетворення є необхідною умовою як національної безпеки, так і євроатлантичної інтеграції. Створення ефективної, надійної та прозорої державної системи – це основний національний інтерес. Якщо правоохоронні органи, служби безпеки і оборони не виконуватимуть своїх обов'язків, країна залишатиметься небезпечно вразливою для інформаційної війни, вторгнення, підривної діяльності та дестабілізації.
- НАТО та ЄС повинні започаткувати консультативні програми з питань роботи правоохоронних органів і сектора безпеки, що були б органічним продовженням уже розпочатої діяльності в сфері оборони.
- Діалог і оборона не є взаємовиключними поняттями. Задля закінчення конфлікту між Україною та Росією і зміцнення безпеки в Європі Захід повинен працювати як у рамках, так і поза рамками Нормандського формату і Мінських угод. Мінськими домовленостями 2014–2015 років, що мали стати основою політичного рішення, – не слід нехтувати, однак глухий кут, в який зайшла ситуація, не повинен вихолощувати їх основні положення: всеохоплююче припинення вогню, виведення іноземних військ і зброї з окупованої території Донбасу та необмежений доступ моніторингових груп Організації з безпеки і співробітництва в Європі (ОБСЄ). Точне дотримання викладених вище умов безпеки повинно передувати імплементації політичної складової Мінських угод.
- Санкції Заходу проти Росії слід періодично переглядати, в разі потреби посилюючи або ж залишаючи як є – і це має тривати стільки ж, скільки триватиме незаконна анексія Кримського півострова і дестабілізація на Сході України. Необхідно добитися повного відновлення міжнародно визнаних кордонів України.

Пришвидшення євроінтеграції

- Заходу слід мати реалістичні очікування щодо того, скільки часу знадобиться для ґрунтовних перетворень в Україні. Євросоюз повинен ставити жорсткі довгострокові умови щодо надання фінансування, що сприятиме проведенню справжніх, а не часткових або косметичних реформ. Україна мусить визнати, що євроінтеграція неможлива без політичних та економічних перетворень.
- Група підтримки України Європейської комісії (ГПУЄК) виявилася особливо вдалим рішенням у політиці щодо України. ГПУЄК визначає і координує надходження до України необхідної допомоги. Під час планування допомоги Україні ЄС слід використовувати саме цей спеціально створений і гнучкий механізм.
- Євросоюз повинен відмовитися від класичних детально прописаних – і дуже неефективних – програм технічної допомоги на користь адаптованих, гнучких довгострокових проектів, які триватимуть щонайменше п'ять років. Також ЄС має розглянути можливість використання деяких

інструментів, завдяки яким вдалося досягти успіху в Румунії (і вчитися на помилках Болгарії) для підтримки верховенства права і судової реформи.

- Підтримка українського бізнесу, особливо малого і середнього, потрібна для того, щоб він витримав конкурентний тиск після закінчення перехідного періоду Поглибленої та всеохоплюючої зони вільної торгівлі (ПВЗВТ). Брак такої підтримки є найслабшою частиною стратегії ЄС щодо України (особливо на регіональному рівні) та сильно відрізняється від того обсягу підтримки, яка надається країнам-кандидатам на вступ до ЄС.

Прискорення економічних та політичних реформ

- Необхідно провести земельну реформу, завдяки якій було би створено ринок земель сільськогосподарського призначення. У такий спосіб величезний, але непродуктивний сільськогосподарський сектор України став би генератором довготривалого економічного зростання. Уже є певні ознаки того, що український уряд готовий до часткового зняття мораторію на продаж землі до кінця 2017 року.
- Необхідно реформувати більше ніж 3000 державних підприємств України. Зусилля слід скерувати в трьох напрямках: вдосконалення корпоративного управління стратегічними об’єктами, що залишатимуться у державній власності; продаж решти підприємств та активів, для яких існує готовий ринок; закриття усіх інших. Реформа також повинна включати продаж більш ніж 10 мільйонів гектарів земель сільськогосподарського призначення, які зараз перебувають у державній власності, що потенційно може значно збільшити обсяг державного бюджету.
- Громадянське суспільство і міжнародна спільнота повинні приділяти реформі виборчої системи та реформі державного управління стільки ж уваги, скільки й антикорупційним заходам. У такому разі можна буде значно швидше позбутися старої системи і відкрити дорогу справжнім молодим реформаторам, котрі творитимуть законодавство і визначатимуть політику. Ширше використання партнерських програм обміну досвідом між держустановами України та урядами країн-членів ЄС сприятиме оптимізації адміністративних процесів та виробленню і впровадженню більш якісної політики.
- Вирішальне значення має побудова суспільної довіри. Відповідальність за це лежить насамперед на українській політичній еліті, котра має переконати населення країни і західних друзів та партнерів України в тому, що для реформування корумпованої системи є політична воля. Громадянське суспільство могло б допомогти, діючи «згори донизу» і об’єднати зусилля з реформаторами в законодавчій та виконавчій владі. Громадянське суспільство також має працювати «знизу вгору», щоб громадяни також могли долучатися до управління країною і здійснювати громадський контроль. Активні громадяни могли б стати основою для численнішого політичного класу реформаторів у майбутньому. Якщо українські політики, судді та державні службовці не визнають необхідності кардинально змінити систему – шляхом створення ефективних інституцій, дієвих механізмів протидії корупції, а також запровадження реальної політичної та юридичної відповідальності, – то старих звичок не

викорінити, а західні партнери значно послаблять підтримку. У підсумку Росія знову зможе підірвати територіальну цілісність України, її політику та майбутню стабільність.

- Західні донори мають додати вимоги щодо ширшої участі громадян у своїх грантових програмах. Вони повинні фінансувати проекти, які сприяють розбудові громадських мереж. Крім того, донорам необхідно просувати справді результативні проекти, а не підтримувати змагальний революційний активізм. Розширення кількості об’єднань власників житла, фермерських і кредитних спілок, асоціацій учителів та підприємців сприяло б децентралізації влади і робило б місцеву владу більш підзвітною.
- Через міжнародні програми розвитку західні партнери повинні допомогти українським неурядовим організаціям і новоствореним політичним партіям, а також університетам та школам управління у вихованні нового політичного та управлінського класу.
- Західні країни повинні й далі тиснути на українську владу з метою проведення судової реформи і розслідування випадків зловживання владою високопосадовців. Це має тривати доти, доки не буде забезпечене повне несприйняття корупції на всіх рівнях. Створення абсолютно вільного від політичного втручання суду першої інстанції або палати надзвичайно важливе для подальшої перемоги в битві з корупцією та розвитку нової правової культури. Апеляційна система повинна бути так само незалежна. На будь-які відхилення від цього курсу повинна бути чітка реакція. Незалежне правосуддя – основний тест українських реформ.
- Щоб підтримати динаміку антикорупційних заходів, уряд повинен пришвидшити процес приватизації державних підприємств шляхом проведення прозорих тендерів. Подальша дерегуляція також залишається пріоритетною, адже необхідно убезпечитися від можливих спроб політиків у майбутньому “викачувати” кошти з бізнесу.
- Українські реформатори, які займаються антикорупційними питаннями, повинні інформувати суспільство про свої досягнення, ламаючи в такий спосіб уявлення про те, що з 2014 року «нічого не змінилося». Чималого успіху було досягнуто в зменшенні можливостей для корупційних оборудок, проте широкій громадськості в Україні про це здебільшого нічого не відомо.

Незавершені реформи можуть підірвати довіру до «нових сил» і призвести до розчарування серед мільйонів українців

Прогрес в Україні помітний на багатьох фронтах, однак насправді ситуація доволі загрозлива. Незавершені реформи можуть підірвати довіру до «нових сил» і призвести до розчарування серед мільйонів українців. Це стане «зеленим світлом» для реваншистів і популістів, які прагнуть зірвати процеси перетворення в Україні. Завдяки виконанню викладених вище рекомендацій можна зробити систему управління більш відкритою і гнучкою, а саму Україну – значно витривалішою.

Західна політика бездіяльності або ж, що гірше, співіснування з Росією за рахунок України може дестабілізувати країну, оскільки ситуація залишається настабільною та небезпечною. Дані, наведені в цьому звіті, чітко вказують на реальну загрозу для України, що нависла з двох боків. Однак це також привід для збільшення Заходом підтримки, незважаючи на – або ж навіть завдяки –

численним іншим проблемам Європи. У політиків менше можливостей вкладати час і зусилля в Україну, але Захід не може дозволити собі ще однієї поразки. Немає жодних ознак, що свідчили б про зміну курсу Володимира Путіна щодо України, тому і Захід також повинен бути непохитний. Україна перебуває на межі – і кожна зі сторона має шанси на перемогу.

Резюме доклада

На протяжении четырех лет с момента начала протестов в рамках Евромайдана Украина борется за свое существование в качестве независимого и жизнеспособного государства. Украинцы вышли на улицы в конце 2013 года, протестуя против затягивания правительством – под давлением России – процесса сближения с Европейским Союзом. Благодаря действиям граждан удалось отстранить от власти президента Виктора Януковича и добиться политического курса в сторону евроинтеграции под руководством нового правительства, на что Россия отреагировала враждебно: в начале 2014 года РФ аннексировала Крым, после чего развернула территориальный конфликт на Востоке Украины и до сих пор старается разделить и ослабить своего соседа.

В целом речь идет не только о борьбе Украины за единство и ее сопротивлении вторжению и давлению России – в военной, дипломатической, экономической, а также информационной сферах. Внимание уделено и внутреннему противостоянию, определяющему политическое, институциональное и общественное будущее Украины. В широком смысле Евромайдан стал ответом как на бездарное внутреннее управление и коррумпированность, так и на препятствия, возникшие на пути евроинтеграции. В данном контексте слово «борьба», вынесенное в заголовок отчета, относиться к внутренним реформам – важным вызовам, ставшим камнем преткновения между молодыми проевропейскими силами, стремящимися к модернизации, и закостенелым консерватизмом, представленным правящим классом и бизнес-элитой. Сегодня перед Украиной стоят две основные задачи: отразить российское нападение и закончить реформирование множества отраслей – евроинтеграционной в том числе.

Будущее и судьба Украины напрямую зависят от дальнейшей трансформации отношений между гражданами, экономикой и государством

Ниже перечислены все значительные достижения Украины со времен Евромайдана. Она не сдалась под давлением военной агрессии России, несмотря на колоссальные человеческие жертвы и территориальные потери. Украина подписала судьбоносное Соглашение об ассоциации с Европейским Союзом, открывая для себя новые экономические возможности и закрепляя, таким образом, свое видение будущего в качестве принципиально европейского государства, а не сателлита либо придатка России. Кроме того, за последние четыре года было проведено значительно больше реформ, чем за последние 22 года независимости. Потребовалось немало усилий для преодоления глубоко укоренившейся коррупции и, в частности, взяточничества, а также для повышения «прозрачности» государственного сектора и уменьшения рисков для финансовой стабильности и экономических перекосов в энергетическом секторе. Вклад гражданского общества был решающим. Будущее и судьба Украины напрямую зависят от дальнейшей трансформации отношений между гражданами, экономикой и государством. На кону и национальная безопасность, и политическая легитимность.

Также в данном отчете – параллельно с признанием достижений Украины – подробно рассмотрены сферы, где власть не оправдывает ожиданий народа либо не выполняет обязательств, наложенных Соглашением об ассоциации с Европейским Союзом. Даже в высших эшелонах власти сильно сопротивление реформам. Кроме того, есть свидетельства того, что противники прогресса прилагают массу усилий для блокировки и ослабления политики, которую Украина должна внедрить для развития экономической сферы, обеспечения реальной независимости судебного аппарата и значительного снижения уровня коррупции.

На карту также поставлены доверие и сплоченность западных государств в украинском вопросе. Международное сообщество всячески содействует Украине, вкладывая в ее будущее миллиарды долларов и отвергая при этом претензии России на первенство в определении места Украины в геополитической расстановке сил и внутреннеполитической ситуации. В данном отчете поданы рекомендации, соблюдение которых будет содействовать сохранению (либо укреплению) репутации западных партнеров: точное выполнение правил, установленных после Холодной войны, и предоставление финансовой помощи при строгом выполнении определенных условий.

Главные вызовы для Украины

1. Безопасность и оборона

В течение трех с половиной лет с тех пор, как началась многовариантная война против России и ее союзников-сепаратистов, Украина продемонстрировала такую внутреннюю силу, о которой в 2014 году мало кто догадывался. До настоящего времени попрать ее национальную идею не удалось ни российскому оружию, ни коррумпированной системе, действиями которой недовольны как западные партнеры, так и народ. Запад предоставил необходимую помощь в четырех областях: дипломатия, санкции против России, экономическая поддержка и содействие реформам, сотрудничество в сфере обороны. Несмотря на то, что усилия принесли свои плоды, в политике и обороне можно было бы достичь намного большего без неоправданных затрат и политического риска. Опасения, что Запад согласиться смягчить свои требования к Украине из-за усталости от Украины, либо согласиться на «большую сделку с Россией», не оправдались. Непоколебимость политического курса США при администрации президента Дональда Трампа поражает.

Тем не менее, сложившаяся в Украине ситуация может измениться к худшему, ведь политические условия нельзя назвать благоприятными. Достижение основных целей в сфере безопасности зависит от сплоченности народа, разумного распределения ресурсов и готовности долго и упорно работать ради этого – как власти, так и обществу. Ни сопротивление Украины, ни непоколебимость западных стран не заставили Москву изменить свое мнение об Украине как «продолжении Родины» либо инструменте в руках Запада, стремящегося ослабить Россию и свергнуть нынешнюю власть. Не стоит недооценивать упорство и приспособляемость России. Тупиковая ситуация на Донбассе, частично оккупированном пророссийскими сепаратистами, которые незаконно провозгласили несколько автономных квазиреспублик, не должна отвлекать внимание от других попыток России «подорвать и перезагрузить» Украину. Вера в то, что при помощи дипломатии можно заставить Россию отказаться от посягательств на Украину и вывести ее из зоны влияния Запада, – не более чем иллюзия. Планы России изменятся лишь в том случае, если политическая элита сможет примириться с тем, что действовать так, как раньше, уже невозможно.

2. Реформы

Евроинтеграция

Евромайдан и Революция достоинства, а также подписание Соглашения об ассоциации с Европейским Союзом обещают радикальные изменения в отношениях Украины с ЕС. Соглашение об ассоциации, подписанное в 2014 году и ратифицированное в 2017 году, имеет как политическую, так и экономическую составляющие. Последняя прописана в договоре о Глубокой и всеобъемлющей зоне свободной торговли (ГВЗСТ), открывающей Украине доступ к единому рынку ЕС при условии проведения заметных реформ.

Подписание Соглашения об ассоциации с Европейским Союзом радикально изменит отношения Украины с ЕС

Евросоюз значительно увеличил объем помощи Украине. Брюссель принимает участие практически во всех аспектах реформ. Группа поддержки Украины Европейской комиссии (ГПУЕК) играет стратегическую роль, координируя и предоставляя экспертную оценку и помощь. Однако на рабочем уровне помощь со стороны ЕС распределяется посредством огромного количества проектов технической помощи с доказанной неэффективностью как в Украине, так и в других развивающихся странах. В Украине ЕС обладает беспрецедентными политическими полномочиями для продвижения реформ. Тем не менее, Евросоюз действует достаточно боязливо, что может быть чревато потерей доверия реформаторов.

Еще одной проблемой является то, что многие представители украинской политической элиты относятся к реформам довольно формально, зачастую создавая видимость проведения фундаментальных изменений, а также имплементации Соглашения об ассоциации. В Украине нет ни единого центра принятия решений, занимающегося вопросами евроинтеграции, ни эффективной координации. Евросоюз был слишком снисходителен к украинской власти, вновь и вновь предоставляя ей кредит доверия. ЕС не хотел бы запустить цепочку изменений, которые впоследствии приведут к смене правительства, поскольку в таком случае к власти могут прийти популистские и/или пророссийские силы, влияние которых с каждым днем усиливается. Проведение всех значительных реформ произошло болагодаря появлению ситуативных «коалиций», в состав которых входили политики, госслужащие, представители гражданского общества, чиновники и эксперты из ЕС, – и при этом необходимо было преодолевать возводимые противниками реформ препятствия. Естественно, прогрессивные коалиции – это лучше, чем ничего, но сама по себе такая деятельность не может стать здоровой основой для институциональных преобразований.

Экономические реформы

Экономическая политика Украины является одной из самых важных отраслей, где необходимы реформы. Инвесторы и наблюдатели неоднократно подчеркивали, что Украина вообще не подлежит реформированию и должна оставаться в «серой зоне» между Востоком и Западом, как это было все двадцать с лишним лет ее независимости. Такое положение является проигрышным для всего населения Украины, за исключением нескольких сотен бизнес-магнатов с привилегированным доступом к политической системе и представителей власти, успешно эксплуатирующих систему с целью наживы. Ядром Революции достоинства стало стремление разрушить старую коррумпированную систему и выйти на соответствующий западным и европейским стандартам экономический и социальный уровень.

Революция достоинства преследовала цель разрушить старую коррумпированную систему и выйти на соответствующий западным и европейским стандартам экономический и социальный уровень

Изменения в политике, которых удалось достичь с 2014 года, хоть и не всегда соответствовали высокому уровню революционных требований, но, по крайней мере, вселяли надежду на улучшение. Украина доказала, что изменения возможны. Было достигнуто базовое макроэкономическое равновесие, в 2016 году увеличились темпы экономического роста в реальном выражении, снизился уровень инфляции, гривна укрепилась, валютные резервы были увеличены в три раза по сравнению с 2015 годом. Текущие счета и дефицит бюджета удалось свести к приемлемым размерам. Бюджетные траты удалось урезать и рационализировать, также был разработан план проведения налоговой реформы и реструктуризации долгов.

Приоритетной для реформирования отраслью также является энергетический сектор. Повышение стоимости горючего с целью уменьшения спроса и целенаправленного распределения субсидий в энергетическом секторе позволило Нефтегазу Украины, государственной нефтегазовой компании, в 2017 году снизить дефицит в государственном секторе до нуля. Банковская отрасль также подверглась масштабным изменениям: практически половину банков закрыли, другие существенно «подчистили» с целью нивелирования возможных обязательств по отношению к государственным финансам в будущем. В Национальном банке Украины, главном банке страны, также была проведена важная внутренняя реформа, благодаря которой НБУ отныне лучше приспособлен к проведению адекватной денежно-кредитной и валютной политики, а также регулированию и надзору в банковском секторе. На очереди после очевидного улучшения макроэкономической и финансовой ситуации в Украине стоит усиление деловой среды, раскрытие потенциала земельного рынка и поддержка инвестирования, что будет содействовать чрезвычайно необходимому экономическому росту.

Демократизация и управление

Началось реформирование украинской сверхцентрализованной и плохо функционирующей системы управления. Было принято множество законов, хотя на практике их нормы выполняются не полностью. Благодаря децентрализации местная власть была наделена расширенными полномочиями и получила право самостоятельно взимать налоги, однако реформирование конституционно закрепленной системы распределения власти, институционального (особенно государственной службы) потенциала, а также СМИ только началось. Обеспечение верховенства права путем проведения судебной реформы и создание основы для эффективного управления также встречают ожесточенное сопротивление со стороны политических и экономических групп имевших привилегированный доступ к власти.

Власть распределена между президентом и правительством, зависящим от изменчивой поддержки политических партий. Тон часто задают популисты, а влияние местной элиты по-прежнему сильно. В итоге исчезает здоровая институциональная конкуренция, а в демократический процесс проникает коррупция. Украина показала довольно неплохие результаты при проведении свободных и честных выборов, начиная с 2004 года. После выборов в октябре 2014 года значительно ослабло влияние донецкой элиты благодаря вхождению в состав парламента молодых реформаторов. Сопротивление, которое им необходимо преодолевать, свидетельствует о важности уже произошедших изменений. Проведение избирательной реформы, благодаря которой всем

участникам процесса будут гарантированы равные условия, всячески откладывается.

Гражданское общество
Благодаря Евромайдану общество, ощутившее свою силу, начало консолидироваться вокруг новой общественной идентичности, в основе которой лежат ценности правосудия, подотчетности и борьбы с коррупцией. В то же время, под давлением российской агрессии, украинцы объединились вокруг идеи украинской государственности.

Украинское гражданское общество может небезосновательно гордиться своими последними достижениями. В отличие от Оранжевой революции 2004–2005 годов, после окончания протестов в рамках Евромайдана общество уже не было парализовано. Слаженные действия активистов на центральном уровне, присутствие в правительстве реформаторов, предоставление на определенных условиях поддержки Запада, а также эпизодический вакуум власти, образовавшийся после Евромайдана, позволили активным гражданам внести свою лепту в преобразование Украины. Важной составляющей демократизации стала интеграция общественных сетей в государственную политику. Одним из наибольших достижений является запуск и институализация ProZorro – системы публичных электронных закупок. Благодаря успеху этого портала был установлен новый уровень прозрачности и отчетности государства перед общественностью.

Наблюдается недостаток обратной связи между гражданами и неправительственными организациями, и передачи этой позиции до власти

Тем не менее, динамичное развитие гражданского общества происходит в основном благодаря небольшой группе активистов и опытных членов неправительственных организаций. В то время как подвластная элитам «старая система» укрепляет оборону, из-за разрыва между организованной адвокацией и заинтересованными гражданами слабеет давление со стороны активистов, требующих реформ. Усилившаяся мобилизация популистских и радикальных групп свидетельствует о заметной уязвимости гражданского общества, что, в свою очередь, порождает разочарование. Не хватает каналов коммуникации между гражданами и неправительственными организациями (НПО) из-за чего «помехи» также появляются на этапе донесения общественной позиции до власти. В результате появляется ощущение, что общественные организации оторваны от местных общин и действуют скорее всего от имени граждан, чем вместе с ними.

Антикоррупционные реформы
За последние четыре года Украина достигла значительного прогресса в создании условий для снижения чрезвычайно высокого уровня коррупции. Однако создание основы – это лишь начало длительной работы, целью которой является решение двух проблем: во-первых, речь идет о фаталистическом восприятии повальной коррупции, а во-вторых – о невозможности укрепления верховенства права из-за сосредоточения влияния и собственности в руках небольшой группы людей. Эти проблемы не новы для Украины, однако за более чем 25 лет коррупционного контроля они приобрели такой масштаб, что стали очень серьезным вызовом для реформаторов.

Самым большим достижением в этой сфере после 2014 года стал практически полный отказ от поставок газа из России (ранее наиболее коррумпированная отрасль экономики), что автоматически сузило круг возможностей для

проведения коррупционных махинаций. Кроме того, благодаря внедрению описанной выше системы публичных электронных закупок деятельность государственного сектора стала намного прозрачнее. Еще одной победой борцов с коррупцией стал запуск новой системы электронной подачи деклараций, в которой чиновники обязаны декларировать свои доходы.

Новые учереждения, созданные для расследования случаев коррупции среди чиновников высшего звена (Национальное антикоррупционное бюро НАБУ и Специализированная антикоррупционная прокуратура) должны еще довести свою результативность, которой в основном препятствует отсутствие надежной судебной системы. Судебная реформа – это ахиллесова пята всей антикоррупционной деятельности. Очевидно, что нынешняя украинская власть может опасаться независимого суда и строгого следования закону. Неудивительно, что между настоящими реформаторами и лицами, заинтересованными в сохранении «старой системы», идет жестокая битва.

Рекомендации

Укрепление безопасности

- Запад должен содействовать тому, чтобы Украина была способна защищать свою независимость и территориальную целостность – независимо от желаний и намерений России. В этой совместной работе основная ответственность и наибольший груз ложится как раз на плечи Украины. Для ее выполнения необходима политическая воля и видимый прогресс в следовании стандартам добросовестного управления в ключевых учреждениях, занимающихся безопасностью и политикой.
- Украина должна осознать, что внутреннее преобразование является необходимым условием как для национальной безопасности, так и евроатлантической интеграции. Создание эффективной, надежной и прозрачной государственной системы – вот основной национальный интерес. Если правоохранительные органы, службы безопасности и обороны не будут выполнять свои обязанности, то страна и дальше будет опасно уязвимой для информационной войны, вторжения, подрывной деятельности и дестабилизации.
- НАТО и ЕС должны запустить консультационные программы по вопросам работы правоохранительных органов и сектора безопасности, которые были бы органическим продолжением уже начатой деятельности в сфере обороны.
- Диалог и оборона не являются взаимоисключающими понятиями. С целью окончания войны между Украиной и Россией и укрепления безопасности в Европе Запад должен работать как в рамках, так и вне рамок Нормандского формата и Минских соглашений. Тупиковая ситуация, в которой оказались участники конфликта, не должна выхолостить основные положения Минских договоренностей 2014–2015 годов, целью которых являлся поиск политического решения: всеобъемлющее прекращение огня, выведение иностранных войск и оружия с оккупированной территории Донбасса и неограниченный доступ мониторинговых групп Организации по безопасности

и сотрудничеству в Европе (ОБСЕ). Беспрекословное выполнение вышеизложенных условий безопасности должно предшествовать имплементации политической составляющей Минских соглашений.

- Санкции Запада против России необходимо периодически пересматривать, усиливая либо оставляя как есть – и этот процесс должен длиться столько, сколько будет длиться незаконная аннексия Крымского полуострова и дестабилизация на Востоке Украины. Необходимо добиться полного восстановления международно признанных границ Украины.

Ускорение евроинтеграции

- Западу необходимо трезво оценивать то, сколько времени потребуется для проведения глубинной трансформации Украины. Евросоюзу нужно ставить жесткие долгосрочные условия предоставления финансирования, что будет содействовать проведению настоящих, а не частичных либо косметических реформ. Украина должна признать, что евроинтеграция невозможна без политических и экономических преобразований.
- Группа поддержки Украины Европейской комиссии (ГПУЕК) оказалась чрезвычайно удачным политическим решением в отношении Украины. ГПУЕК определяет и координирует поступление в Украину необходимой помощи. При планировании помощи Украине ЕС необходимо использовать именно этот специально созданный и гибкий механизм.
- Евросоюз должен отказаться от классических предварительно прописанных – и чрезвычайно неэффективных – программ технической помощи в пользу адаптированных гибких долгосрочных программ (минимум на пять лет). Также ЕС должен рассмотреть возможность использования некоторых инструментов, благодаря которым удалось достичь успеха в Румынии (и учиться на ошибках Болгарии) для поддержки верховенства права и судебной реформы.
- Поддержка украинского бизнеса, особенно малого и среднего, необходима для того, чтобы он выдержал конкурентное давление после окончания переходного периода Глубокой и всеобъемлющей зоны свободной торговли (ГВЗСТ). Этот разрыв остается самым слабым звеном стратегии ЕС в отношении Украины (особенно на региональном уровне) и значительно отличается от поддержки, предоставляемой странам-кандидатам на вступление в ЕС.

Ускорение экономических и политических реформ

- Необходимо провести земельную реформу, в результате которой был бы создан рынок земли сельскохозяйственного назначения. Таким образом огромный, но непродуктивный сельскохозяйственный сектор Украины стал бы генератором долговременного экономического роста. Уже есть некоторые признаки того, что правительство Украины готово к частичному снятию моратория на продажу земли до конца 2017 года.
- Необходимо реформировать более 3000 государственных предприятий Украины. Нужно сосредоточиться на трех направлениях:

совершенствование корпоративного управления стратегическими объектами, которые останутся в государственной собственности; продажа оставшихся предприятий и активов, для которых имеется готовый рынок; закрытие всех остальных. Реформа также должна включать продажу более 10 миллионов гектаров земли сельскохозяйственного назначения, которые сейчас находятся в государственной собственности, что потенциально может значительно увеличить госбюджет.

- Гражданское общество и международное сообщество должны уделять реформе избирательной системы и организации управления государством столько же внимания, сколько и антикоррупционным мерам. Таким образом можно значительно быстрее избавиться от старой системы и открыть дорогу настоящим молодым реформаторам, которые будут творить законодательство и определять политику. Более широкое использование партнерских программ обмена опытом между госучреждениями Украины и правительствами государств-членов ЕС будет содействовать оптимизации административных процессов и выработке, а также внедрению более качественной политики.

- Решающее значение имеет установление общественного доверия. Ответственность за это лежит, в первую очередь, на украинской политической элите, которая должна убедить население страны и западных друзей и партнеров Украины в том, что для реформирования коррумпированной системы есть политическая воля. Гражданское общество могло бы помочь, действуя «сверху вниз», объединяя усилия с реформаторами в законодательной и исполнительной власти. Гражданское общество также должно действовать «снизу вверх», чтобы граждане могли принимать участие в управлении страной и совершать общественный контроль. Активные участники процесса могли бы стать основой для более многочисленного политического класса реформаторов в будущем. Если украинские политики, судьи и государственные служащие не признают необходимости кардинально изменить систему – путем создания надежных институций, предоставления настоящих гарантий против коррупции, а также внедрения реальной политической и юридической ответственности, – то старые привычки искоренить не удастся, а западные партнеры значительно ослабят поддержку. В итоге Россия сможет снова подорвать территориальную целостность Украины, ее политику и будущую стабильность.

- Западные доноры должны требовать более широкого участия граждан в своих грантовых программах. Им необходимо финансировать проекты, способствующие построению сетей гражданской поддержки. Кроме того, донорам нужно продвигать действительно результативные проекты, а не поддерживать состязательный революционный активизм. Расширение жилищных объединений, фермерских и кредитных союзов, ассоциаций учителей и бизнесменов содействовало бы децентрализации власти и сделало бы местную власть более подотчетной.

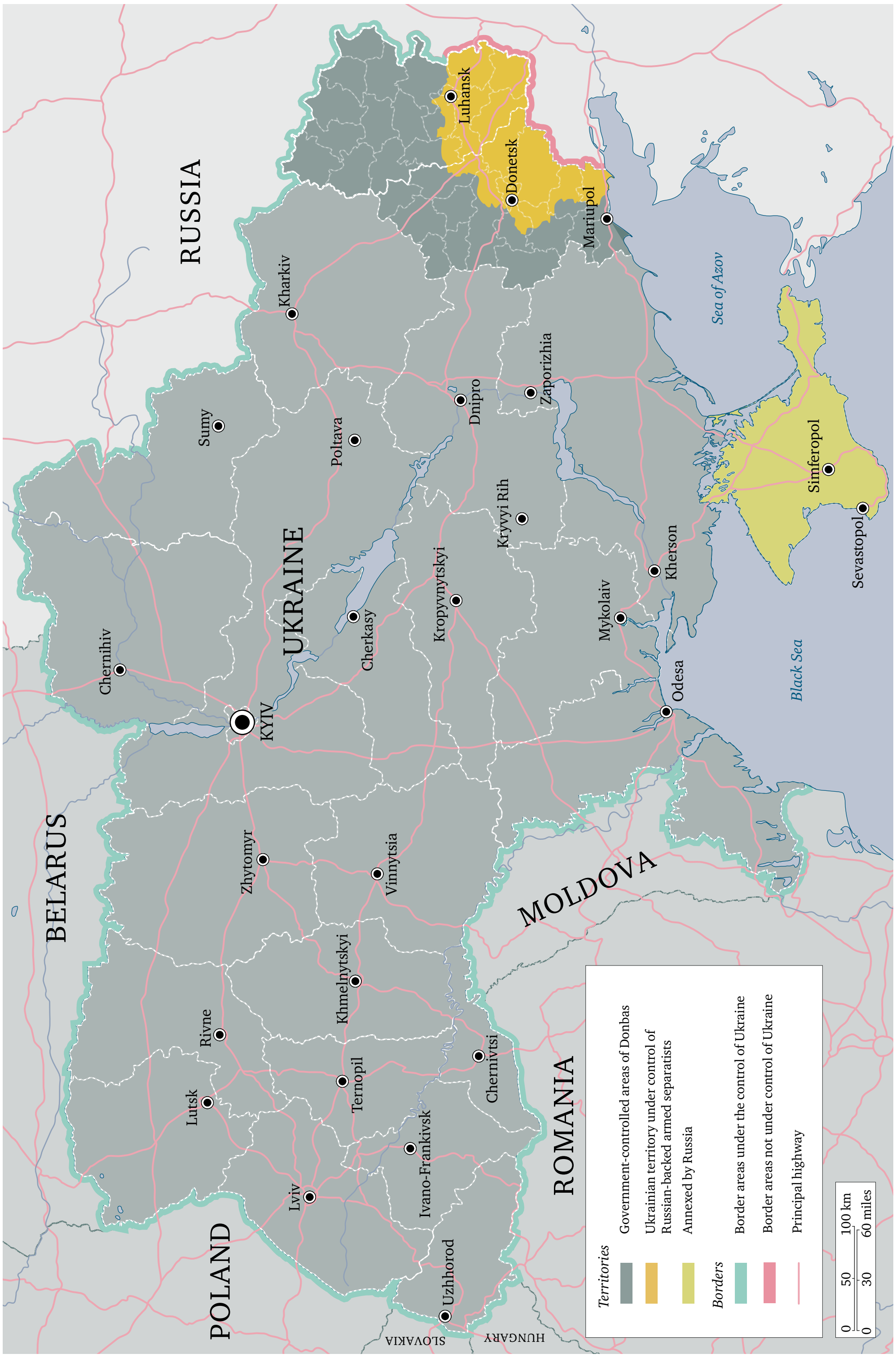
- Посредством международных программ развития западные партнеры должны помочь украинским неправительственным организациям и новым политическим партиям, а также университетам и школам управления в вопросах взращивания нового политического и руководящего класса.
- Западным странам необходимо и далее осуществлять давление на украинскую власть с целью проведения судебной реформы и расследования случаев злоупотребления властью чиновников высшего звена. Это должно длиться до тех пор, пока не будет обеспечена абсолютная нетерпимость в отношении всех форм коррупции. Создание абсолютно свободного от политического воздействия суда первой инстанции либо палаты чрезвычайно важно для последующей победы в борьбе с коррупцией и развития новой правовой культуры. Апелляционная система также должна быть независима. На любые отклонения от данного курса должны быть четкая реакция. Установление независимой судебной системы является главной проверкой украинских реформ.
- Для поддержки динамики антикоррупционных мер правительство должно ускорить процесс приватизации государственных предприятий путем проведения прозрачных тендеров. Дальнейшая дерегуляция также является приоритетной, поскольку необходимо предотвратить возможные попытки политиков взимать поборы из бизнеса в будущем.
- Украинские реформаторы, занимающиеся антикоррупционными вопросами, должны информировать общество о своих достижениях, ломая таким образом представление о том, что с 2014 года «ничего не изменилось». На пути уменьшения возможностей для коррупционных сделок был достигнут значительный успех, но широкой общественности в Украине об этом зачастую ничего не известно.

Незавершенные реформы могут подорвать доверие к «новым силам» и привести к разочарованию среди миллионов украинцев

Прогресс в Украине заметен на многих фронтах, хотя на самом деле ситуация остается достаточно угрожающей. Незавершенные реформы могут подорвать доверие к «новым силам» и привести к разочарованию среди миллионов украинцев. Это станет «зеленым светом» для реваншистов и популистов, стремящихся сорвать трансформационные процессы в Украине. Благодаря выполнению изложенных выше рекомендаций можно сделать систему управления более открытой и гибкой, а саму Украину – значительно более устойчивой.

Западная политика бездеятельности либо, что намного хуже, сосуществования с Москвой за счет Украины может дестабилизировать страну, поскольку ситуация до сих пор нестабильна и небезопасна. Факты, приведенные в данном докладе, прямо указывают на реальную угрозу для Украины, нависшую с двух сторон. Тем не менее, это также является поводом для увеличения Западом помощи, вопреки – или даже благодаря – многочисленным проблемам Европы. У политиков меньше возможностей вкладывать свое время и усилия в Украину, но Запад не может снова допустить поражения. Нет никаких признаков того, что Владимир Путин изменил свой курс, поэтому и Запад должет остается нерушим. Украина оказалась на грани – и шансы на победу есть у каждой стороны.

Map 1: Ukraine



Source: Ukraine Crisis Media Centre.

1. Introduction

James Nixey

Ukraine's cohesion and its unqualified independence are central to European security and stability. Its struggle for self-determination and reform since the Euromaidan revolution is the principal subject of this report, which takes stock of the tumultuous politics of the past four years and considers Ukraine's prospects of fulfilling its citizens' aspirations for better governance, security and a closer relationship with Europe.

The mass protests against the Viktor Yanukovych administration in late 2013 and early 2014 set in motion a succession of profound changes to Ukraine's political, security, economic and institutional landscape. A corrupt regime with unhealthy ties to Russia was replaced by the popularly elected and EU-aligned administration of President Petro Poroshenko – even though this administration is less committed to reducing corruption than it should be. A ground-breaking Association Agreement with the EU has been sealed, offering significant economic opportunity but imposing stringent conditionality. Partly to comply, Ukraine has attempted the most ambitious policy reforms since independence in 1991, with mixed (though occasionally impressive) results. And, of course, Ukraine has been taken to war by Russia and its proxies – an assault that has involved the illegal annexation of Crimea and the 'separatist' occupation, supported by Russian military power, of territories in the eastern Donbas region.

Popular desire for renewal gives the reformers a strong mandate. But entrenched conservative forces are resisting, with some success

The upshot of these events is that the struggle for Ukraine is existential in more senses than one. First and foremost, there is the challenge Ukraine faces to ensure its survival as a sovereign state. Moscow's efforts to undermine its neighbour's political functioning, to act as a spoiler in Kyiv's relations with the West, to restrict Ukrainian trade, and to manipulate and corrupt public opinion continue – and the military threat is never far away. Russia would likely find it hard to invade and hold the whole country, but its belligerent interference, if unchecked by Ukrainian and Western resolve, risks doing enough to fragment Ukraine or, at the least, render it a politically diminished client state.

Just as important is the fierce contest within the country to decide the type of society and polity that Ukraine becomes in the future: an open, modern, transparent and essentially 'European' state with institutions and systems to achieve sustainable economic growth and ensure the welfare of the population; or an inward-looking and sclerotic nexus of insiders, establishment figures and unscrupulous business interests. Popular desire for renewal, allied to weariness with Ukraine's notoriously high levels of corruption, gives the reformers a strong mandate. But entrenched conservative forces are resisting, with some success.

This demanding set of conditions, and the critical juncture at which Ukraine finds itself, provides the context in which this report assesses the country's position and prospects. The report's central argument is that Ukraine's declared ambitions for domestic transformation and European integration are fragile and under threat from outside and from within, and that the country is too important to be allowed to fail. The six chapters that follow explore the nature of those threats – and the prospects for overcoming them – taking into account the complications arising from Ukraine's Soviet legacy and a Russia hostile to its intended European alignment. The authors also suggest realistic policy actions, notwithstanding the limitations imposed by foreign policy divisions in a Western community confronting serious challenges of its own and in which liberalism is either in retreat or on hiatus.

Why Ukraine matters

The rise of insular, populist politics in the West arguably makes Ukraine's efforts to recruit international support more difficult. It may test the resolve of governments and donors to keep providing material and/or political assistance – especially if reforms continue to disappoint, as is clearly a risk. But there are important reasons for not abandoning Ukraine to corrupt elites, not giving up on its project of European integration, and not accepting as inevitable its capture within Russia's geopolitical orbit.

The first and most obvious is Ukraine's determination to shape its own destiny. Plans for the EU Association Agreement enjoyed significant, though by no means unanimous, public support,[1] and it was President Yanukovych's suspension of the agreement in late 2013 that triggered the Euromaidan protests leading to the 2014 revolution. In the most recent opinion poll, conducted in 2016, 86 per cent of respondents representing a nominal population of 43 million (a figure excluding Crimea's 2 million residents) said that it is very important that Ukraine becomes a 'fully functioning democracy'.[2] To consign Ukraine to effective Russian control would therefore be a dangerous option, both in moral and practical terms. It would deprive Ukraine of the right to choose its own system of governance and international alliances. It would also open the country to untrammelled criminality and deprivation of human rights, which would likely contaminate neighbouring EU states and others further afield. The most likely outcome of forsaking Ukraine would be prolonged instability inside the country, with the danger of internal armed conflict and refugee flows that could reach beyond Ukraine's borders.

To compromise on supporting and protecting Ukraine's sovereignty would be a humiliating admission of impotence and constitute a surrender of Western values

The second reason for firm but constructive Western engagement is Ukraine's importance to the rest of Europe, NATO and some other former Soviet states. As the largest country in Europe (after the European part of Russia), bordering four EU member states, and with a population far in excess of that of Scandinavia and the Baltic states combined, Ukraine is 'too big to fail' – the consequences of it doing so are too severe. A weak and abandoned Ukraine would present security risks to NATO and the EU, as well as to individual states that have invested stock and reputation in supporting the country and proclaiming it as deserving of the same rights as any other state in Europe.

Ukraine's failure would also pose a threat to the wider international order. To compromise on supporting and protecting Ukraine's sovereignty would be a humiliating admission of impotence and constitute a surrender of Western values. It would mean accepting the existence, in effect, of a two-tier world divided between a privileged set of fully sovereign states and a group with lesser rights. And it would create a situation that Russia or other states would be quick to exploit, further weakening the international system. The abandonment of Ukraine to a resurgent Russian 'sphere of influence' of any kind would thus surely return to haunt Europe, just as other geopolitical bargains did in the last century.

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[1] Forty-two per cent of the population supported the EU Association Agreement, according to a poll conducted for the Razumkov Center in August 2012. This level of support exceeded that for any other policy.
[2] National Democratic Institute (2016), 'Opportunities and Challenges Facing Ukraine's Democratic Transition: Nationwide Survey with eight local oversamples, November – December 2016', https://www.ndi.org/sites/default/files/Ukraine%20Research%20December%202016%20web%20%282%29.pdf.

Achievements and dangers

Sustained Western support is needed both to limit Russian predations and to build Ukrainian capacity to effect the institutional, judicial and economic reforms the country needs. Notwithstanding the West's uneven resolve to date in holding Ukraine to policy and governance commitments, that support in principle is neither unconditional nor inexhaustible – and there is a risk that it will be offered more reluctantly in the future. This makes it all the more vital that Ukraine do more to help itself.

To its credit, Ukraine has reformed more since the 2014 Euromaidan revolution than in the previous 20-plus years of its post-Soviet existence

To its credit, Ukraine has reformed more since the 2014 Euromaidan revolution than in the previous 20-plus years of its post-Soviet existence. Under severe economic, military and psychological pressure, the country has held together after the annexation of Crimea. Notable achievements include the efforts of the government and the National Bank of Ukraine, under difficult circumstances, to stabilize the economy in response to the 2014–15 recession and economic crisis; the formation of new anti-corruption agencies (albeit with mixed results so far); and the authorities' increasing use of technology to improve public-sector transparency. Progress has been especially evident in the transformation of the energy sector. This has involved Ukraine obtaining gas from sources other than Russia, transferring subsidies to those most in need, and stopping Naftogaz, the state-owned gas supply and transit company, from being the major cause of haemorrhage in the public finances. Many of the most impressive achievements can be attributed to pressure from Ukraine's remarkably well-developed and tenacious civil society.

But Ukraine also lives under constant threat. It remains at war with Russia, which does not even admit to being a participant in that conflict; which has a newly professionalized and re-equipped military getting live practice in Syria; which supports rebellions in the Donbas region; which has organized targeted assassinations in Kyiv and elsewhere, as well as major and disruptive cyberattacks; and which has an unwavering goal at least as strong as Ukraine's – to prevent Ukraine from achieving a durable association with the West.

Arguably the greatest danger to Ukraine comes from within. Ukraine's establishment, its informal networks, its Soviet legacy and, most of all, vested interests in the form of businessmen with excessive influence on the levers of power (frequently but inaccurately known as oligarchs)[3] pose the greatest threat to stability and success. Some brave individuals have come up against enormous pressure from those who want to dilute reforms and protect the status quo. Key reforms in areas such as healthcare, public administration and the judiciary have either not yet started or are only in their infancy.

The most recent evidence shows that reform in Ukraine risks stalling, that the forces ranged against it are pushing back with determination, and that efforts to foster good governance are being sabotaged by parts of the government, including at senior levels. Vested interests in Ukraine will remain powerful, albeit to a lesser extent, even if their most prominent exemplars are deprived of influence through corruption prosecutions or as a result of declining businesses. In sum, while institutional resilience and capacity have been built up in a number of areas, the proverbial

[3] The term 'oligarch' suggests someone with the power to rule and control. This is inaccurate when applied to Ukraine. It is fairer to say that Ukrainian tycoons have excessive sway in their country's politics. This nuance presupposes, however, that Petro Poroshenko himself, with his business and media interests intact, is not classed as an oligarch, on account of his being the president.

concrete has not set. In particular, the activities of civil society are now threatened by proposed new laws that would undermine it, allowing the government in Kyiv to backtrack on much-needed administrative and economic policy improvements.

Framing the problem: the need to challenge misconceptions

A precondition of any prognosis on Ukraine's foreign policy and reform trajectory is a sound understanding of the nature of the problem at hand. This is especially critical when expecting others to heed policy recommendations – as this report does. For this reason, it is helpful as a starting point to puncture a number of misconceptions (sometimes wilful, sometimes born of ignorance) about the country, its geopolitical situation, its reform prospects, and the roles of Western interlocutors and donors.

One frequent but uninformed criticism of the West asserts that it *forced* Ukraine to choose between itself and Russia in 2013, and that this caused the drastic deterioration in the West's relations with Russia. There are several problems with this argument. The first is that Ukraine has in fact been committed to a European future throughout its 26 years of independence, and the EU merely offered Ukraine preferential trade terms in exchange for institutional reform. Indeed, the EU engaged in five years of negotiations with Ukraine on the Association Agreement before even considering the deal acceptable.

The second flaw in the argument is that it was *Russia*, not the West, that tried to force Ukraine to choose sides. Moscow did this initially through its bribery and coercion of President Yanukovych; and then, once he had fled to Russia, and Ukraine had undergone what it called a 'Revolution of Dignity' (but which Russia falsely claimed was a Western-backed coup by right-wing forces), through territorial annexation, destabilization and war.

To think of Ukraine as 'not Europe' because we once knew it as a part of the USSR is to surrender to the grip of the past

The third problem is that the downturn in the West's relations with Russia was well under way when the Euromaidan protests started. Russia had chosen to define itself on an increasingly anti-European platform as early as 2012, upsetting the balance in its bilateral relations with the West in addition to alienating Ukrainians. In short, Western policy towards Ukraine in 2013 was not, as some have erroneously suggested, an example of reckless provocation because tensions with Moscow were already elevated.

Another mistake is the 'basket case' argument – that Ukraine's corruption is so great, and the country's prospects so hopeless, that it is not deserving of Western support. The logic is faulty here, too. Of course the West must learn from its mistake of offering financial support and trade agreements to the corrupt Yanukovych regime. Strict conditionality is essential: Western financial aid *should* be dependent on reforms. But it does not follow that there is a connection between fulfilment of those reforms and support for Ukraine's territorial integrity.

The final misconception is by those who argue that Ukraine is always going to be in a zone of Russian interest. History does not suggest an appropriate precedent. Some of the Ukrainian lands were indeed under Russian control for over 300 years, but others were not; earlier, Kyiv had flourished before Moscow was even founded. Over the last quarter of a century, however, Ukraine has finally emerged as a political nation. This changes the situation fundamentally. To think of Ukraine as 'not Europe' because we once knew it as a part of the USSR is to surrender to the grip of the past. Instead, this report takes it as a given that Ukraine is a fledgling European state. Whatever Vladimir Putin said to George W. Bush in 2008 about Ukraine not being a real country, and

regardless of what Russia has done to Ukraine since then or may do to it in future, Ukraine has made its own choice about its political order and European orientation. In fact, considering the backlash against a European identity in parts of what might be considered 'traditional' Europe, the reality is that Ukraine often acts and speaks in a more pro-European fashion than do some EU member states.

Winning the struggle

Securing Ukraine's future as an independent state, preventing further conflict and ensuring the country derives maximum benefit from a deeper relationship with the EU will require action and commitment on several fronts. Ukraine's reasonable record of success in reform so far will count for nothing if the direction of travel goes into reverse as a result of domestic and/or exogenous factors. This report warns of that very real danger, and offers recommendations for avoiding it.

Russian diplomacy is designed to realize the ambition of a return to the Cold War order of great powers deciding the fates of smaller states

Under normal conditions – i.e. an absence of war – Ukraine could probably survive as an independent state by 'muddling through', as it has done for most of its short, post-Soviet life. Now, though, it will need greater political, patriotic and military resolve to stand even a chance. Such is the fundamental level of disagreement between Russia and Ukraine (and consequently between Russia and the West), such is Russia's implacability, and so hard is the task, that Ukraine's success as a state will entail sacrifice of many kinds.

First and foremost, many more Ukrainians will have to continue to be prepared to fight, with the risk of joining the 10,200 of their countrymen who have already died in the conflict.[4] Russia is not letting go of its territorial gains or aspirations; nor will conventional diplomacy persuade it do so. Indeed, Russian diplomacy is *designed* to realize the ambition of a return to the Cold War order of great powers deciding the fates of smaller states. The unpalatable truth, unspoken by Western politicians of course, is that only more Russian deaths on the Ukrainian battlefield, combined with a greater economic squeeze through increased sanctions, will pressure Russia sufficiently to change its policy and release its grip.

Second, critical domestic reforms in a host of areas will necessarily bring difficulties and entail hardship. Independent institutions and application of the rule of law provide the only ways to diminish the excessive influence of inappropriate individuals in Ukrainian public and political life. Economic modernization is also needed to ensure that Ukraine is ready for the technical and commercial demands of European integration, and to provide political legitimacy to reform through improvements to living standards. Growth of the middle class, supported by an improving economy, would help in this respect. But prospects are uncertain: the middle class in Ukraine is struggling as the economy, even though it looks set to meet its 2 per cent growth forecast for 2017,[5] faces fundamental challenges. Prime among these is the lack of foreign

[4] Office of the United Nations Commissioner for Human Rights (2017), *Report on the human rights situation in Ukraine: 16 May to 15 August 2017*, p. 7, http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf (accessed 5 Oct. 2017). The figures cover the period from 14 April 2014 to 15 August 2017. The report also states that the conflict has resulted in more than 24,000 people wounded. Estimates vary as to the number of internally displaced persons (IDPs) created by the conflict. An Atlantic Council report gives a figure of 1.6 million registered IDPs, citing Ukrainian government data, but mentions a UNHCR estimate indicating that the real figure is much higher. Van Metre, L., Steiner, S. E. and Haring, M. (2017), *Ukraine's Internally Displaced Persons Hold a Key to Peace*, Atlantic Council Issue Brief, October 2017, p. 2, http://www.atlanticcouncil.org/images/Ukraines_Internally_Displaced_Persons_Hold_a_Key_to_Peace_web_1003.pdf (accessed 5 Oct. 2017).
[5] World Bank (2017), 'Ukraine Economic Update – April 2017', http://www.worldbank.org/en/country/ukraine/publication/economic-update-spring-2017 (accessed 8 Sep. 2017).

investment, a lack of competitiveness and the precipitous fall in trade with Russia.[6] Corruption and war are not incentives to invest. (Paradoxically, though, the better Ukraine does economically, the less policy leverage the West has over it.)[7]

The prospect of further economic upheaval offers a reminder of the fundamental political dimension to reform: Ukraine is in need of such deep-rooted change that most citizens will inevitably become economically worse off before their lives get better. That is a difficult sell politically, and will not win votes in the 2019 presidential election. Economic improvement will only come slowly, and the Ukrainian population needs to resist the blandishments of populist forces. The country is paying heavily for the lack of reforms before 2014, and there are no instant solutions.

The West will need to sustain its assistance efforts over the medium to long term, and will have to accept greater sacrifice itself in order to help Ukraine

Finally – and on the same subject of politically unpopular policies – the West will need to sustain its assistance efforts over the medium to long term, and will have to accept greater sacrifice itself in order to help Ukraine. There is an economic cost associated with deterring Russian behaviour in Ukraine. As the target of sanctions, Russia is clearly bound to suffer the greater economic pain.[8] But there needs to be recognition in the West that sanctions, if applied properly as opposed to half-heartedly, affect Western economies too.

In other words, for the West, as for Ukraine, some sacrifices, as well as increased political resolve, are required for longer-term gains in stability and security. If Western countries remain committed to supporting Ukraine, both bilaterally and multilaterally through the G7 and the EU, Russian strategy towards the country can be checked to a significant extent. The imperative is to win time and make it possible for reforms to go deeper, and for a new political generation to mature and come to power.

About this report

The challenges for Ukraine are multiple and complex, but for convenience this report breaks them down into six categories. A separate chapter is devoted to each challenge, in addition to this introductory essay. The six chapters cover: geopolitics and security in the context of the conflict with Russia; European integration and the demands of the Association Agreement; economic reform; governance, democratization and the media; the development of civil society; and efforts to combat corruption.

Each chapter has been written by a different expert on the region. While the report as a whole seeks to offer a coherent picture of the situation in Ukraine and the challenges ahead, it deliberately allows for a diversity of voices. The seven authors are individually responsible for the views in their own chapters, but have jointly agreed on the report's recommendations.

[6] By 2016, Ukraine's exports of goods and services to Russia were just $6.68 billion – down from $25.26 billion in 2011. Kramar, O. (2017), 'Diversifying from Russia: Don't stop now…', *Ukrainian Week*, 9 June 2017, http://i.tyzhden.ua/content/photoalbum/2017/06_2017/12/bild/uw/%D0%9A%D0%BD%D0%B8%D0%B3%D0%B06.pdf.
[7] Ukraine's economic recovery is all the more impressive considering the denial of Ukraine's economic productivity through its coal and steel industries in occupied Donbas, and the closing-off of the Russian export market. Ukraine's GDP decreased by a cumulative 16 per cent in real terms in 2014 and 2015. See World Bank (2017), 'Ukraine Economic Update – April 2017'.
[8] Connolly, R. (2015), *Troubled Times: Stagnation, Sanctions and the Prospects for Economic Reform in Russia*, Research Paper, London: Royal Institute of International Affairs, https://www.chathamhouse.org/publication/troubled-times-stagnation-sanctions-and-prospects-economic-reform-russia.

Box 1: Timeline – Euromaidan movement and major post-Euromaidan events

2007–11	
	Negotiations take place over the proposed Association Agreement between the EU and Ukraine.
2013	
21 November	Prime Minister Mykola Azarov announces the suspension of preparations for conclusion of the EU–Ukraine Association Agreement. In response, the first civic protests begin in 'Independence Square' (Maidan Nezalezhnosti) in Kyiv. The ensuing popular movement and political transition become known as the 'Revolution of Dignity' or 'Euromaidan'.
2014	
18–20 February	Seventy-nine protesters are killed and more than 500 injured in confrontations with riot police in Kyiv.
21 February	President Viktor Yanukovych is removed from office and flees to Russia. Oleksandr Turchynov is appointed acting president.
7 March	Leading NGOs and experts establish the Reanimation Package of Reforms (RPR), a coalition to lobby for rapid structural reforms.
18 March	The Crimean peninsula is annexed by the Russian Federation.
April	The state-owned National TV and Radio Broadcasting Company (NTU) is transformed into an independent public broadcaster.
April	The European Commission establishes the Support Group for Ukraine (SGUA) to deliver coordinated reform assistance, and approves a package of Autonomous Trade Preferences (ATP) opening EU markets to Ukraine on a unilateral basis.
April	The IMF approves a support programme with a credit line totalling $17.5 billion.
12 April	A group of pro-Russian militants takes control of the police, security services and administrative buildings in the city of Sloviansk, signalling the start of Russian intervention in the Donbas region. The Ukrainian government loses control over large parts of the Donetsk and Luhansk oblasts.
25 May	Petro Poroshenko is elected president of Ukraine in an early election.
17 July	A passenger jet, Malaysia Airlines flight MH17, is shot down in eastern Ukraine by a Buk missile system, transported from Russia into Ukraine on the same day.
July–August	The Ukrainian army reclaims control of some parts of Donbas. However, separatist militants and Russian regular troops halt the Ukrainian offensive in a battle at Ilovaysk. The Ukrainian army death toll: 241.
5 September	The Protocol on the Results of Consultations of the Trilateral Contact Group, known as 'Minsk I', is signed.
September	The EU adopts Tier 3 sanctions against Russia that introduce asset freezes, travel bans, and restrictions on access to capital markets and transfer of dual-use technology.

September	The EU and Ukraine agree to postpone provisional application of the Deep and Comprehensive Free Trade Agreement (DCFTA), a part of the Association Agreement, for 15 months. Trilateral EU–Ukraine–Russia negotiations are launched to discuss Moscow's concerns over the impact of the DCFTA on Russia–Ukraine trade relations.
16 September	The European Parliament and Verkhovna Rada (Ukraine's parliament) simultaneously ratify the EU–Ukraine Association Agreement.
14 October	The Verkhovna Rada adopts a law creating the National Anti-Corruption Bureau of Ukraine (NABU).
26 October	A parliamentary election results in a wide-ranging realignment of political forces and the establishment of a pro-reform coalition known as 'European Ukraine'. Arseniy Yatsenyuk is reappointed as prime minister.
2015	
12 February	A revised Package of Measures for Implementation of the Minsk Agreements, known as 'Minsk II', is signed.
18 February	Debaltseve, a major rail hub, is captured by pro-Russian separatist forces. The Ukrainian army death toll: 267.
February	A law 'On Open Use of Public Funds' is passed, requiring all government entities, including state-owned enterprises, to publish their budgets and details of their expenditure online.
31 August	The first reading of constitutional amendments is adopted in parliament. The amendments introduce deeper decentralization and incorporate provisions on the 'special status' of self-governance for the Luhansk and Donetsk oblasts, which are regulated by a separate law. Four police officers die and 150 are wounded as a result of violent protest against the 'special status' clause.
December	A new law on the civil service is adopted.
2016	
1 January	Provisional application of the DCFTA starts. In retaliation, Russia suspends the application of its free-trade agreement with Ukraine.
19 February	The ruling 'European Ukraine' coalition loses its parliamentary majority, sparking a new political crisis.
29 February	The State Bureau of Investigation (SBI) is established. When fully operational, the SBI will assume most of the functions of the Prosecutor General's Office (PGO) in respect of investigating serious crimes, including corruption.
18 March	A law on e-declarations of the assets of government officials and judges is adopted in parliament.
1 April	A new digital public procurement system, ProZorro, is introduced for all state tenders.
6 April	Dutch citizens vote in a referendum on the EU–Ukraine Association Agreement. Their rejection of closer EU links with Ukraine halts the EU ratification process. Special amendments to the agreement are later introduced to ensure a positive vote in the Dutch parliament.

14 April	Prime Minister Yatsenyuk resigns as the pro-reform coalition crumbles. Volodymyr Groysman, a close ally of President Poroshenko, is appointed prime minister.
2 June	Constitutional changes are adopted by parliament to facilitate an overhaul of the judicial system. The changes cover the establishment of a new Supreme Court, a new High Anti-Corruption Court, courts of appeal and a new High Court of Intellectual Property Rights. (At the time of writing, the changes have yet to be fully implemented.)
3 June	The government's *Strategic Defence Bulletin* lists meeting the criteria for NATO membership as a priority for Ukraine.
15 August	A new National Agency for Prevention of Corruption (NAPC) becomes operational.
December	PrivatBank, the country's biggest lender, owned by the businessman Ihor Kolomoyskyi, is nationalized. This is the culmination of a major clean-up of the banking sector.
2017	
18 February	Vladimir Putin, Russia's president, signs a decree recognizing the internal passports issued by the so-called Donetsk People's Republic (DPR) and Luhansk People's Republic (LPR). He authorizes use of the Russian rouble as legal tender in these separatist 'republics'.
March	Amendments to the law on e-declarations require suppliers to anti-corruption organizations as well as citizens affiliated with them to complete the same extensive e-declaration forms as government officials. This makes it harder for anti-corruption NGOs to operate freely.
May	The Dutch parliament accepts the EU Association Agreement.
11 May	The EU Council lifts visa requirements for Ukrainians travelling to the EU for short stays.
15 May	The Ukrainian government bans the use of Russian internet service providers and social media platforms, such as Vkontakte.
July	Ukraine is hit by a cyberattack disrupting public institutions. Dubbed 'NotPetya', it is believed to be linked to Russian hacking groups.
7 July	Kurt Volker, former ambassador to NATO, is appointed as US Special Representative for Ukraine Negotiations.
1 September	The EU–Ukraine Association Agreement and DCFTA fully enter into force, following completion of the ratification process by all EU member states.

2. Geopolitics and Security

James Sherr

Ukraine is no longer the country that it was in 2014. It has acquired the sense of national purpose that eluded it for most of its history. Although the so-called 'Revolution of Dignity' – which toppled President Viktor Yanukovych and confirmed a foreign policy tilt towards Europe – has not fulfilled its promise of political and economic renewal, Ukrainians have treated the war with Russia not as a referendum on their political leaders but as an attack on the homeland.

In this sense Ukraine today differs from the France of 1940, where state weakness led to national collapse. The qualities that have enabled Ukrainians to circumvent and resist a corrupt state have also mobilized the country against an external enemy. Thanks to two areas of state success, macroeconomic management and energy policy, Ukraine is far more able to shoulder the burdens of war than it was in 2014, when the economy was in free fall and less than one month's worth of reserves remained in the central bank.[9] The armed forces and National Guard are considerably more capable than the volunteer battalions of 2014, and have established a measure of deterrence against Russian forces still able to inflict devastating damage on the country.

For all of these accomplishments, confidence in Ukraine's future continues to rest on faith more than capacity. To prevail against a state determined to cripple it, Ukraine requires effective and responsible governance, not only voluntary action. Public support, modernization of the state, the renewal of elites, the transformation of dysfunctional working practices and the rescue of the economy from 'shadow structures' of power are not simply prerequisites to European integration, but matters of national security. They cannot be accomplished by bottom-up efforts alone.

Although a basis for optimism now exists, the partial hiatus afforded by the Minsk accords of 2014 and 2015 appears to be drawing to a close. Ukraine's greatest trials might lie ahead of it. For Russia, Ukraine's sustainability over the past three-and-a-half years has been unexpected.[10] But the Kremlin remains determined to subordinate Ukraine or wreck it. For the third time since February 2014, it is raising the stakes and changing its strategy in ways that foreshadow a less familiar and more testing struggle for Ukraine. The same will be true for Ukraine's Western partners, upon whom much continues to depend.

Ukraine and the West: an unsettled partnership

Three-and-a-half years after Russia's annexation of Crimea, the events of 2014 have lost their power to outrage Western opinion. They have become a wearisome and deceptively stable set of facts no more unsettling than others that few anticipated several years ago: refugee crises, nationalist populism in Europe and political revolution in the US. In 2014, the West was resolved to bring Russia back into compliance with international law and was hopeful that it could do so without war or undue risk. Today, that clarity and optimism are much diminished. Many view a baleful but managed status quo as the only realistic alternative to a wider and uncontrollable conflict. Those who take a more far-sighted and critical view of these matters must struggle to maintain their influence. Resources remain woefully out of balance with policy commitments. The gap in perceptions between national security establish-

[9] For a succinct overview of these changes, see Jaresko, N. A. (2017), *What Ukraine Should Demand of Itself and from the West,* Center for Transatlantic Relations, DGAP and Robert Bosch Stiftung, https://transatlanticrelations.org/publication/ukraine-demand-west-natalie-jaresko/ (accessed Mar. 2017). Natalie Jaresko served as Ukraine's finance minister in 2014–16.
[10] In 2014, it was not uncommon to hear the view, as confided to the author by one regime ideologist that November, that 'by next winter, there will be no Ukraine'.

ments, broader political elites and electorates is significant. In an age of asymmetrical warfare, the contrast between the intermittent attentiveness of Western governments and the fixed, determined focus of the Kremlin has become a dangerous asymmetry in itself.

Nevertheless, over the past year, Russian assertiveness has been achieving the unthinkable: reviving Western cohesion. The Kremlin's intrusions into the domestic politics (and inner workings of electoral systems) in France, Germany and the US have created a sense of threat among many who recently believed there was none. Russia's antagonism towards the liberal democratic order is no longer simply a perception of experts. Even if Ukraine's cause arouses less enthusiasm than it did in 2014, it has become politically difficult – even for the US president, Donald Trump – to challenge established Western policy.

Since the annexation of Crimea, that policy has had four dimensions: diplomacy, economic sanctions against Russia, economic support for Ukraine, and training and advisory assistance to Ukraine's armed forces. In each area, fortitude and timidity, acumen and misjudgment have been present in equal measure. At the same time, Ukraine's own determination to renovate and transform itself remains a critical, if unspoken, variable in Western political will. The stronger Ukraine's commitment to reform, the stronger the West's likely commitment to supporting it against Russia. The converse, of course, also applies. The purpose of this chapter is to assess whether the West's policies on Ukraine and responses to Russian aggression towards the country are fit for purpose, and whether Ukraine's own actions help or hinder these efforts.

Diplomacy

The events of 2014 underscored what many knew and pretended not to know: that Russia now defines its interests in opposition to the post-Cold War security order, which extended the principles of the 1975 Helsinki Final Act to the former Warsaw Pact and Soviet states.[11] In the words of France's permanent representative to the UN, Russia's actions in early 2014 had 'vetoed the Charter of the United Nations'.[12] Consequently, the initial aims of Western diplomacy following Russia's annexation of Crimea and intervention in eastern Ukraine were not to compromise or negotiate, but to assist in the formation of a unified response and impress upon Russia the necessity of restoring Ukraine's borders, territorial integrity and sovereignty. Even so, the gravity of the situation was underestimated.

In August 2014, and yet more dramatically in February 2015, Russia raised the stakes by bringing its conventional military forces on to the battlefield in Ukraine. This unnerved the German chancellor, Angela Merkel, who up until then had been the bulwark of the West's tough policy towards Russia. The two agreements that followed – the Protocol on the Results of Consultations of the Trilateral Contact

[11] *Rossiyskaya Gazeta* (2015), 'Dialog a ne voyna: Sergey Naryshkin prizval liderov Zapada uchit' "uroki Yalty"' [Dialogue rather than War: Sergey Naryshkin calls upon Western leaders to study the "lessons of Yalta"], 4 February 2015, https://news.rambler.ru/politics/29025835-sergey-naryshkin-prizval-liderov-zapada-uchit-uroki-yalty/. In this he echoed Vladimir Putin's Valdai Club speech which contrasted the 'mechanisms' established after the Second World War (based on 'balance of power' and 'respect') with the emergence of US *diktat* after the Cold War. Not a word was said about the post-Cold War system that Mikhail Gorbachev and Boris Yeltsin co-authored. See Office of the President of the Russian Federation (2014), 'Zasedaniye Mezhdunarodnogo diskussionnogo kluba «Valday»' [Meeting of the Valdai International Discussion Club], 24 October 2014, http://kremlin.ru/events/president/news/46860.
[12] Permanent Mission of France to the United Nations in New York (2014), '15 March 2014 – Security Council – Ukraine – Statement by Mr. Gérard Araud, Permanent Representative of France to the United Nations', http://www.franceonu.org/15-March-2014-Security-Council.

Group (known as 'Minsk I', 5 September 2014), and the Package of Measures for Implementation of the Minsk Agreements ('Minsk II', 12 February 2015) – compromised the singularity of purpose that had prevailed until that point.

These agreements were the products of military coercion, and their terms reflected this unpalatable fact. The Implementation Package (Minsk II) committed the parties to a settlement that compromised Ukraine's sovereignty; that formalized the pretence that Russia was an interested party rather than a belligerent; that gave quasi-legitimacy to the separatist leaders; and that mandated a process of accord [*soglasovanie*] between them and the Ukrainian government. This led to the 'separate districts of Donetsk and Luhansk Oblasts' (ORDLO) in the east of the country being granted far-reaching autonomy ('special status'), including a right to independent relations with contiguous Russian regions (specified in point 11, note 1 of Minsk II).

At the same time, Minsk II reaffirmed several fundamental Ukrainian interests. It called for an immediate and complete ceasefire, withdrawal of heavy weapons and unimpeded access for the OSCE[13] Special Monitoring Mission throughout the conflict zone (points 1–3); the withdrawal of foreign forces (point 10); the holding of OSCE-monitored elections (point 11); and, at the end of the process, 'reinstatement of full control of the state border by the government of Ukraine' (point 9). Key Russian and separatist demands fell outside the rubric of the agreements: notably, 'federalization' (full autonomy for the ORDLO and the right of veto on Ukraine's state policy), as opposed to the provisions of 'special status' that Ukraine has provisionally incorporated into its constitutional reform.[14]

The ambiguities in Minsk II have given Russia pretexts to shrug off the agreement's core provisions

Taken in the round, the ambiguities in Minsk II have given Russia pretexts to shrug off the agreement's core provisions. Instead of a roadmap, the implementation process has become a maze. Rather than offer robust objections, the European interlocutors in the 'Normandy Format' at the time – President François Hollande of France, and Germany's Chancellor Merkel and Foreign Minister Frank-Walter Steinmeier – allowed themselves to be pulled further into the minutiae of timing and sequencing.

Beginning in January 2016, Washington invested in a separate channel of negotiation between US Under-Secretary of State Victoria Nuland and President Vladimir Putin's special representative, Vladislav Surkov. That channel swiftly led nowhere, the overall process stalled, and by the end of the October 2016 Normandy meeting many were prepared to conclude that the Minsk initiative had definitively failed. Following his meeting with Merkel in Sochi on 2 May 2017, Putin all but said as much.

Yet if the Minsk process is dead in practice, Europe has been unwilling to say as much. As Vladimir Socor has observed, 'the German government (on a bipartisan basis) is firmly beholden to the Minsk process, connecting its fulfilment with the lifting of sanctions on Russia'.[15] Where Germany leads, the EU follows. In the wider German polity, it is axiomatic that even the toughest policy must be accompanied by dialogue.

[13] Organization for Security and Co-operation in Europe.
[14] After Ukraine's parliament in July 2015 voted to send draft amendments to the constitution regarding decentralization to the Constitutional Court, which incorporated 'special status' provisions, US Under-Secretary of State Victoria Nuland stated that Ukraine was 'doing its job' and assured Kyiv that 'there would be no excuses on the other side for renewed violence'. US Embassy in Ukraine (2015), 'Assistant Secretary Victoria Nuland Press Availability in Kyiv, Ukraine', 16 July 2015, https://ua.usembassy.gov/assistant-secretary-victoria-nuland-press-availability-kyiv-ukraine/.
[15] Socor, V. (2017), 'Putin, Merkel Exchange Views on Ukraine in Sochi (Part 1)', Jamestown Foundation Eurasia Daily Monitor (EDM), 10 May 2017, https://jamestown.org/program/putin-merkel-exchange-views-ukraine-sochi-part-one/.

If not Minsk, then what? Thus far, nobody in Europe has answered that question, and almost nobody is thinking about it.

In Washington, this hesitancy has disappeared. The appointment of Kurt Volker, former ambassador to NATO, as US Special Representative for Ukraine Negotiations is one of the clearest indications yet that the Trump administration, rather than President Trump himself, exercises stewardship over the US's Russia policy. Secretary of State Rex Tillerson's 31 March 2017 statement at the NATO-Ukraine Commission was more severe and categorical than any issued by his predecessor, John Kerry, or by President Barack Obama. Tillerson's perfunctory nod to the Normandy partners – 'we thank France and Germany for their determination to find a diplomatic solution' – was a forewarning that the US would no longer follow their meandering lead. Russia would be held 'accountable' to its Minsk commitments. Yet in an apparent departure from the policy of linking sanctions to the terms of the Minsk agreements, Tillerson warned that 'sanctions will remain until Moscow reverses the actions that triggered our sanctions'.[16] The repetition of this formula in Kyiv in July, as well as the appointment of Volker, an adamant critic of Russia's policy, signalled a clarity of purpose that has long been wanting.[17,18] Yet just how that purpose is to be realized is not certain at all in this most opaque of American administrations.

This most bizarre configuration of power and responsibility in Washington has caused perplexity in Moscow. The actions of the previous US administration were resented but predictable, indeed disarmingly transparent. The actions of the Trump administration are unpredictable and thus instil caution on Russia's part. The US missile strike on Syria, Russia's ally, in April 2017 and the subsequent downing of a Syrian air force Su-22 jet two months later demonstrated a new-found American willingness to act unilaterally, decisively and without warning. The message seems clear enough: if red lines are crossed, expect a sharp response. Will this principle be applied to Russia in Donbas, and if so by what means?

For Ukraine, the issues are no less acute than they are for Russia. Hitherto, it could count on a unified Western policy, with all its evident limitations (notably the absence of lethal military assistance). Kyiv's dialogues with Washington and Berlin proceeded along separate channels but as part of one conversation. For now, the West remains committed to a common goal, but consensus on the means can no longer be taken for granted. For all the robust messages that Tillerson's statements of March and July delivered, one formula of the Obama era was missing: 'no decisions on Ukraine without Ukraine'. Despite its internal discordance, this is a tough-minded US administration, determined to hold others to their commitments. If Ukraine is to secure its own interests, it will need to raise its standing among its interlocutors and supporters, as well as showing greater commitment to delivering the institutional improvements expected of it. Key to achieving this are institutional capacity and credibility, to be demonstrated, in Tillerson's words, by 'efforts to implement challenging reforms'.[19] Ukraine has no long-term future as a ward of the West.

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[16] U.S. Department of State (2017), 'Remarks To NATO-Ukraine Commission', 31 March 2017, https://www.state.gov/secretary/remarks/2017/03/269359.htm.
[17] Sanger, D. E. (2017),'Tillerson Says Russia Must Restore Ukraine Territory, or Sanctions Stay', *New York Times,* 8 July 2017, https://www.nytimes.com/2017/07/09/world/europe/tillerson-russia-sanctions-ukraine.html?mcubz=0.
[18] Reuters (2017), 'U.S. taps ex-envoy to NATO to resolve Ukraine crisis', 7 July 2017, https://uk.reuters.com/article/uk-usa-ukraine-volker-idUKKBN19S1JD?il=0.
[19] U.S. Department of State (2017), 'Remarks To NATO-Ukraine Commission'.

Sanctions

To date, economic sanctions form the only coercive component of Western policy towards Russia. In 2014, this fact reflected an underestimation of the tenacity of Putin's Russia and its willingness to shrug off Western opprobrium, tolerate penalties and raise the stakes at times of its choosing. By 2017, sanctions represented the sole common denominator of Western policy.

In this contest as in others, four factors determine the effectiveness of sanctions: the adequacy of their design, the unity of action underpinning them, their duration, and their integration with other policy instruments.

In design the sanctions are both considered and coherent. The enhanced format adopted in September 2014 (Tier 3) encompasses 'restrictive measures' (asset freezes and travel bans) as well as 'economic measures' (restrictions on access to capital markets and dual-use technology transfer).[20] The separate package of sanctions on Crimea, which can be ramped up at a time of the West's choosing, also encompasses asset freezes and prohibitions on investment, travel and contact. In both cases, the sanctions have neither the aim nor the potential to cripple the Russian economy. But they constrain investment in several high-priority areas and add to the structural ills that Russia's unreformed economy imposes upon itself. Inevitably, the sanctions have provoked countermeasures and, for better or worse, strengthened defiant and autarkic impulses in what by now is a highly 'mobilized' state.[21] But they are not a matter of indifference to Russia. They are a hardship that will be borne as long as the Kremlin calculates that it can achieve its goals.

Western unity in enforcing sanctions is closely linked to their duration. As long as the Russian economy continues to suffer the effects of a combination of sanctions and chronic hydrocarbon dependency, the costs and trade-offs associated with the present political course will gradually increase. Yet while sanctions constrain capacity, there is no guarantee that they will constrain short-term behaviour. The intensification of sanctions *preceded* Russia's biggest military offensive in January/February 2015. Despite these limitations, on 28 June 2017 the EU extended its restrictive measures by another six months.[22] US congressional leaders finalized a yet more stringent set of measures on 22 July.[23] Nevertheless, the adverse reaction in Brussels to some elements of the US sanctions package shows that Western unity has limits. This will remain the case as long as the collateral effects of sanctions fall disproportionately on Europe and, within the EU, more heavily on some member states than others.

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[20] European Union Newsroom (undated), 'EU sanctions against Russia over Ukraine crisis', https://europa.eu/newsroom/highlights/special-coverage/eu-sanctions-against-russia-over-ukraine-crisis_en (accessed 26 Jul. 2017). For a full timeline from March 2014, see European Council (2017), 'Timeline – EU restrictive measures in response to the crisis in Ukraine', http://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/history-ukraine-crisis/.
[21] For discussion of the complexities surrounding these issues, see Connolly, R. and Hanson, P. (2016), *Import Substitution and Economic Sovereignty in Russia*, Research Paper, London: Royal Institute of International Affairs, https://www.chathamhouse.org/publication/import-substitution-and-economic-sovereignty-russia; and Monaghan, A. (2014), *Defibrillating the Vertikal: Putin and Russian Grand Strategy*, Research Paper, London: Royal Institute of International Affairs, https://www.chathamhouse.org/publication/defibrillating-vertikal-putin-and-russian-grand-strategy.
[22] The extension runs until 31 January 2018. Reuters (2017), 'European Union extends Russia sanctions until Jan 2018', 28 June 2017, https://www.reuters.com/article/us-ukraine-crisis-eu-sanctions-idUSKBN19J1DM.
[23] Flegenheimer, M. and Sanger, D. E. (2017), 'Congress Reaches Deal on Russia Sanctions, Setting Up Tough Choice for Trump', *New York Times*, 22 July 2017, https://www.nytimes.com/2017/07/22/us/politics/congress-sanctions-russia.html?_r=0.

Economic support

The provision of economic support to Ukraine is not a response to Russian agression *per se.* It has been a mainstay of Western policy from the time Ukraine joined the IMF in September 1992.[24] Its enhancement since 2014 has not, for the most part, been stimulated by Russia, but by the change of power in Ukraine and the expectations that the Revolution of Dignity has raised in the West. Outlays committed (as opposed to those disbursed) since 2014 amount to $40 billion, backed by the IMF, of which $15 billion represents the writing off of sovereign and sovereign-guaranteed debt, mostly owed to the private sector. Although most support has taken the form of macroeconomic assistance, much is also targeted at sectoral reform, regional development and humanitarian aid.[25]

Despite two popular uprisings with revolutionary potential, Ukraine's baleful culture of power has managed to adapt and reformat itself

Ukrainians routinely note that such sums pale in comparison with the funding committed to Greece (estimated in 2012 by José Manuel Barroso, then president of the European Commission, at €380 billion).[26] The comparison is unhelpful for two reasons. First, it arouses needless irritation. As an EU member state, Greece has a *prima facie* claim to greater support, and the potential impact of a default on the euro underscored this fact. Second, it weakens Ukraine's message. Ukraine's debt crisis was minor by Greek standards, and it was arrested in 2014–15 primarily by resolute action on the part of the country's own authorities. External support of $15 billion was sufficient to restore currency stability and bring external debt and national reserves to sustainable levels. The sums required to support Ukraine are reasonable and, given the security stakes, justifiable.

The crux of the matter is that economic assistance in itself will not cure Ukraine's ills, which are the result not of macroeconomic mismanagement but of the dysfunctionalities of a bloated, destructively centralized and extortionate state. Despite two popular uprisings with revolutionary potential, Ukraine's baleful culture of power has managed to adapt and reformat itself. So long as this culture exists, so will opaque, non-market relations and a semi-criminalized economy. Injections of further financial assistance – in effect throwing good money after bad – will feed these pathologies rather than cure them. When the IMF and other donors link disbursements to strict conditionality and review, they are acting in Ukraine's interests. Conditionality has provided essential support to the Ukrainian reformers who presided over the restructuring of Ukraine's banking sector in the face of pressure and personal threats, and to those who transformed the state-owned oil and gas company, Naftogaz, into a profitable entity.[27] Equally, in late 2016, the US was entirely within its rights in curtailing assistance to the State Customs Service when Ukraine failed to honour its commitment to reform the management of this agency.[28]

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[24] A 'systemic transformation facility' was established in October 1994 and the IMF's first three-year Extended Fund Facility was approved in September 1998. IMF (2017), 'Ukraine and the IMF', updated 20 July 2017, https://www.imf.org/external/country/UKR/index.htm?pn=0 (accessed 26 Jul. 2017).
[25] Given the multiplicity of actors and programmes engaged, overall sums are very difficult to arrive at. At the launch of the European Commission Support Group for Ukraine, President Barroso cited a figure of €11 billion. European Commission (2014), 'Support Group for Ukraine', press release, 9 April 2014, http://europa.eu/rapid/press-release_IP-14-413_en.htm. See also IMF (2017), 'Ukraine and the IMF'; The White House, Office of the Press Secretary (2016), 'FACT SHEET: U.S. Assistance to Ukraine since February 2014', 15 June 2016, https://obamawhitehouse.archives.gov/the-press-office/2016/06/15/fact-sheet-us-assistance-ukraine-february-2014.
[26] EUbusiness (2012), 'Barroso values total EU aid for Greece at EUR 380bn', 18 April 2012, http://www.eubusiness.com/news-eu/finance-public-debt.g38. Currency conversion as of 31 July 2017, Reuters (2017), 'Currencies Quote', http://uk.reuters.com/business/currencies/quote?srcAmt=1&srcCurr=EUR&destAmt=&destCurr=USD (accessed 31 Jul. 2017).
[27] Buckley, N. and Olearchyk, R. (2017), 'Valeria Gontareva: Ukraine's Central Bank Reformer', *Financial Times*, 26 March 2017, https://www.ft.com/content/48b1e1d4-07d2-11e7-97d1-5e720a26771b.
[28] On the May 2016 agreement: U.S.-Ukraine Business Council (USUBC) (2016), 'Broadening and Deepening U.S. Customs Assistance to Ukraine', 23 May 2016, http://www.usubc.org/site/recent-news/broadening-and-deepening-us-customs-assistance-to-ukraine. On ending support: Williams, M. and Polityuk, P. (2016), 'USAID ends funding for troubled Ukraine customs reform', 30 December 2016, http://www.reuters.com/article/us-ukraine-crisis-corruption-usaid-idUSKBN14J10Z.

Overcoming these problems requires political will, but also realism about what Ukraine can reasonably achieve over the short to medium term. The system in Ukraine has repeatedly proved itself to be more powerful than individuals, including presidents. The current president, Petro Poroshenko, is a product of this system. He appoints subordinates on the basis of loyalty rather than excellence. His commitment to reform is less than his commitment to power. In effect, he is a weak monarch in a neo-feudal and oligarchic system. His powers are limited, and reform does not depend solely upon him. The powers of Prime Minister Volodymyr Groysman, a more committed reformer, are even more limited. Rather, it is mainly countervailing forces – civil society, the IMF and the war itself – that are putting the system under pressure.

Military assistance

The decision of Ukraine's post-Euromaidan authorities to designate the conflict with Russia an 'anti-terrorist operation' rather than war reflected three concerns: a fear of escalation; a need to keep the West on board; and the provisions of the Ukrainian constitution, which link the declaration of war to a state of emergency and restrictions on civil liberties. The limited nature of Western military support to Ukraine since then throws into relief the inordinate burden on economic sanctions as the primary means of reversing Russian aggression. Kuwait, a non-NATO state with no pretence to democratic governance, was deemed worthy of armed assistance in 1990 because international law was brazenly defied, and major security interests were at stake. In contrast, Ukraine is not seeking, nor does it require, the intervention of Western armed forces. Its demand for other forms of military assistance, including defensive weapons, is intrinsically legitimate. One cannot combat an armed assailant by robbing his bank account.

The question is also whether providing Ukraine with more extensive military support is prudent. President Obama believed that it was not. To this day, Chancellor Merkel is adamant that there can be no 'military solution' to the Ukraine conflict. For its part, Russia boasts that Ukrainian resistance could be crushed in a matter of days.[29]

This is far from axiomatic. Ukraine's armed forces and National Guard are considerably more capable than the troops that were so savagely mauled in Ilovaysk and Debaltseve, in eastern Ukraine, in mid-2014 and early 2015. Allied train-and-equip missions have acquired impressive momentum, and the capacity of Ukraine's forces to absorb and amend what is taught is equally impressive. It is they, after all, not NATO, who have direct experience of Russia's 'new generation' war.

Moreover, Russia's armed forces have limitations as well as strengths. They are not occupation troops. They strike and withdraw. Russia has already shown itself reluctant to risk prolonged exposure of ethnic Russian servicemen to the potential hostility of Russian-speaking populations in eastern Ukraine. The hazards and burdens of seizing and holding large parts of the east (let alone other parts of the country) would be considerable. Russia's system of state 'mobilization' – the complex of state measures for moving the country on to a wartime footing[30] – is not only taut, but stretched. While 'training by fighting' enhances the combat effectiveness of Russia's

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[29] For example, Lenta (2015), 'Naryshkin rasskazal o perspektivakh Ukrainiy v voyne s Rossiey' [Naryshkin talks about Ukraine's prospects in war with Russia], 23 July 2015, Lenta.ru/news/2015/07/23/narishkin_war.
[30] For a discussion of state mobilization in the Russian security context, see Monaghan, A. (2016), *Russian State Mobilization: Moving the Country on to a War Footing*, Research Paper, London: Royal Institute of International Affairs, https://www.chathamhouse.org/publication/russian-state-mobilization-moving-country-war-footing.

armed forces, the continuous deployment of battle groups on Ukraine's borders requires extensive infrastructure and support. That burden is compounded by Russia's expeditionary operation in Syria, the economic strains of a long-term programme of defence modernization, and the costs of Crimea's annexation (which partly reflect the high cost of supplying electricity and water to Crimea, services formerly provided by Ukraine). However, the fact remains that Ukraine's forces would suffer grievous losses in high-intensity combat with Russia's battle groups.

There are no silver bullets in this equation. Ukraine's principal vulnerability is not the absence of lethal weapons from the West. The army is encumbered by a largely unreformed defence system, a lack of cohesion and interoperability across units and branches, distrust between frontline units and higher command echelons, and a deficit of competent command and staff officers above unit level. Nevertheless, it is also dangerously outmatched by Russia in many areas of hard capability. Ukraine's defence-industrial complex is capable of supplying much of what is needed, but not all.

Ukraine will not have the military capacity it needs until it builds state capacity. That is something that only Ukraine can do

The aim of Western policy should be to strengthen Russian prudence. Until Russia's military options are curtailed and its margins of advantage reduced, force and the threat of force will remain credible instruments of its policy. To counter this threat, a structure of deterrence is needed *inside* Ukraine, not only on the eastern border of NATO. Western military assistance has a role to play in this enterprise, as do weapons systems that improve Ukraine's ability to defend itself. The aims of such assistance should be: to restrain (rather than defeat) Russia and its separatist allies; to reinforce Ukraine's capacity for self-defence; to diminish incentives for offensive military action (on both sides); to underscore the unviability of the separatist enclaves; and to increase incentives for diplomacy.

Deterrence depends still more on Ukraine. The leadership's commitment to reform in defence is no less vital than it is in other sectors. It will require sustained effort and presidential support to modernize command structures and the higher management of defence. Ukraine will not have the military capacity it needs until it builds state capacity. That is something that only Ukraine can do.

Russia: a tenacious and adaptable adversary

Where Ukraine is concerned, Western reproaches have done little but sustain and reinforce Russian grievances since the dissolution of the USSR. The premise underpinning current Western policy – that Russia's actions in Ukraine constitute an act of aggression and a breach of international law – arouses little more than cynicism in Moscow and much of the rest of Russia. Russian interests in Ukraine have emerged from an amalgam of factors, but identity is the strongest of these. Former US National Security Advisor Zbigniew Brzezinski's celebrated axiom – 'without Ukraine, Russia ceases to be an empire' – evokes the Russian riposte that 'without Ukraine, Russia can be an empire, but it cannot be Russia'.[31] This conviction, now reinforced by state ideology, arises from far older sentiments and mythologies. The campaigns of Catherine II, who established Novorossiya in what is now southern Ukraine, were wars not of liberation

[31] The full Brzezinski quote is: '[W]ithout Ukraine, Russia ceases to be an empire, but with Ukraine suborned and then subordinated, Russia automatically becomes an empire', *Wall Street Journal* (2013), 'The Battle for Ukraine', 27 November 2013, https://www.wsj.com/articles/the-battle-for-ukraine-1385419698?tesla=y (paywall). Brzezinski, Z. (1994), 'The Premature Partnership', *Foreign Affairs,* March/April 1994, https://www.foreignaffairs.com/articles/russian-federation/1994-03-01/premature-partnership.

but of conquest, designed to eradicate the foreignness of those whom Aleksandr II would later redefine as a branch of the 'tripartite Russian people'.[32]

Russia's geopolitical traditions are at least as old as these civilizational ones. The concepts of buffer zones, spheres of influence and the limited sovereignty of neighbours became central to Russian geopolitical thinking in imperial times, and these building blocks of security have retained their place in the post-Soviet era. Russia's military establishment defines threat in terms of proximity; security is equated with control of space (irrespective of the views of those who inhabit it) and uncontested defence perimeters. During the post-Cold War 'unipolar moment', Western policy on issues from Kosovo to Iraq, and of course on NATO enlargement, helped to restore these premises to orthodoxy in Russia, as did Ukraine's 2004–05 Orange Revolution (which fatefully coincided with the EU's eastern enlargement). Moscow thus views the post-Cold War 'order' as a system of 'diktat' and encroachment designed to isolate Russia and, in the words of Leonid Reshetnikov, then director of the Presidential Administration's official analytical centre, 'overthrow President Putin and produce the breakup [*raskol*] of the country'.[33]

Russia's interests in Ukraine are the product of history, geography and sentiment. But its policy towards the country is the product of means, opportunity and constraint. Russia's actions in 2014 resulted from urgency and improvisation as much as planning. Well before Putin came to office, Russia had used the means at its disposal to influence and penetrate Ukraine's political, business and security structures. By de-professionalizing and hollowing out the state for his own reasons, Yanukovych facilitated this process. Had he remained in power, Russia would have had no evident reason to annex Crimea or foment insurgency in Donbas. Yet he lost power and did so with apparent suddenness. Three months after securing everything it had asked for, Russia faced a new leadership in Kyiv and a sudden loss of influence. By invading and annexing Crimea, Russia turned the tables. It re-established its relevance and, in the process, transformed the balance of power in the Black Sea. What it profoundly misjudged was Ukraine's spirit and its capacity to resist – but this has been covered elsewhere and needs no retelling.

As in every complex undertaking, Russian policy in Ukraine proceeds by stages and adapts to opposition. Since the conflict began, its aim has been to secure Ukraine's 'federalization' (i.e. fragmentation and neutralization), with Western agreement and in binding form. Yet individuals and institutions close to the Russian state (including the State Duma) have occasionally articulated more maximalist objectives without official censure. At every stage, Russian policy has targeted points of perceived weakness.

The key phases in this foreign policy evolution are as follows:

Phase 1: Novorossiya (March–September 2014). Ukraine's historically Russian-speaking lands were initially seen as points of weakness, and they became the focus of Russian operational planning. Published correspondence and recordings confirm that in early 2014 the Kremlin financed and directed armed actions not only

[32] As late as the first Soviet census of 1926, 65.8 per cent of the inhabitants of the eight oblasts approximating Novorossiya defined their ethnicity as Ukrainian and only 16.4 per cent as Russian. Despite the influx of Russians during the Stalin-era five-year plans, according to the 2001 Ukrainian census Russians made up just under a quarter of inhabitants and ethnic Ukrainians just over two-thirds. Clem, S. R. (2014), 'What Exactly is Putin's New Russia?', *Washington Post,* 4 September 2014,https://www.washingtonpost.com/news/monkey-cage/wp/2014/09/04/what-exactly-is-putins-new-new-russia/?utm_term=.61d6fdefa3c6.
[33] Argumentiy Nedeli (2015), 'Tsivilizatsiya Rossiya' [Russian Civilization], 2 April 2015, http://argumenti.ru/toptheme/n481/394395. Leonid Reshetnikov is the former director of the Russian Institute for Strategic Studies.

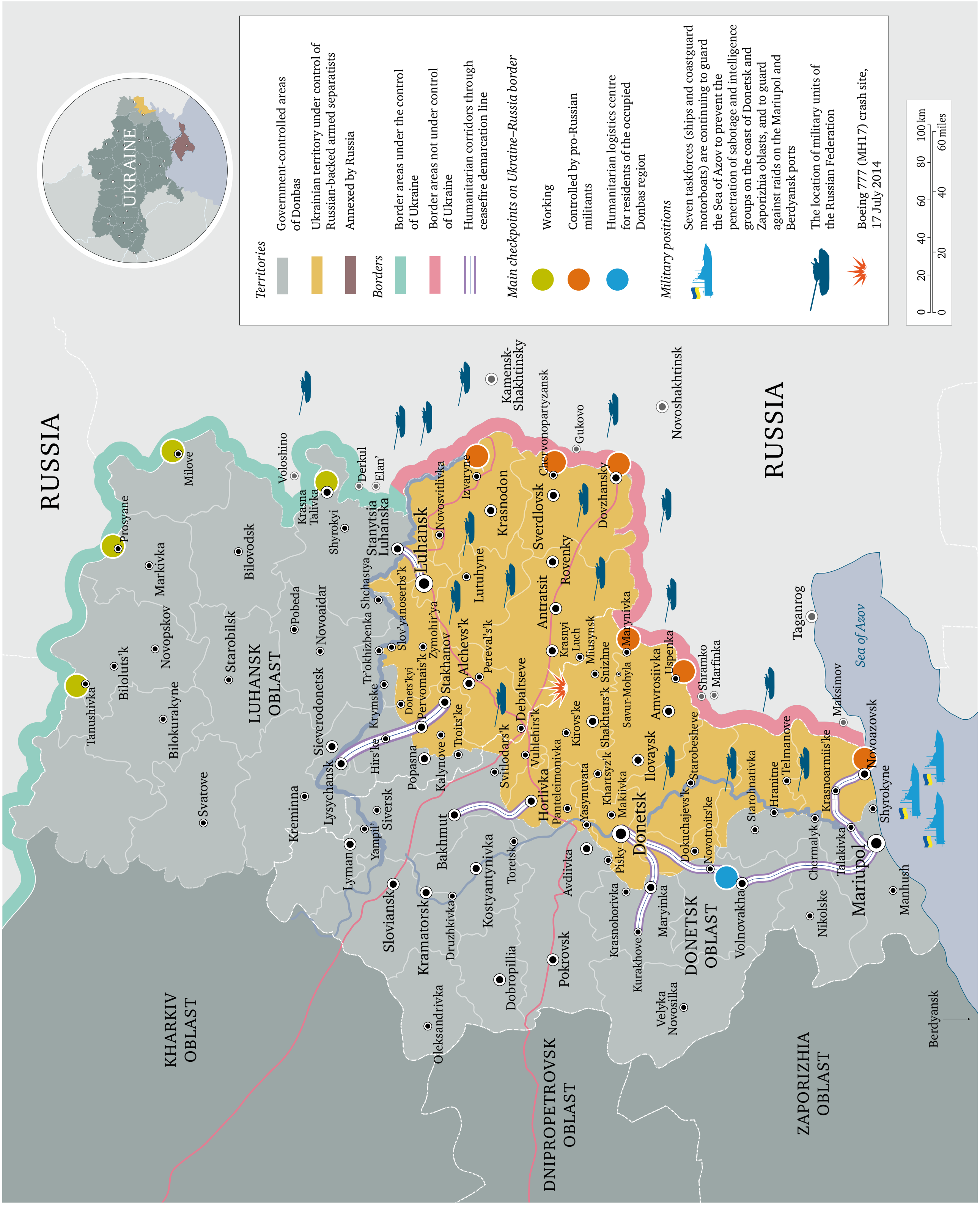
in Donbas but also in Kharkiv, Dnipropetrovsk, Mariupol, Zaporizhia and Odesa.[34] These efforts were hastily improvised and largely ineffective. In the border regions of eastern Donbas, where they were more successful, documents confirm that the Kremlin's overall *kurator* [overseer], Vladislav Surkov, approved each ministerial appointment before its 'candidature' was announced.[35, 36] The Novorossiya project effectively ended when the Russians launched their combined-arms offensive of September 2014.

Phase 2: Minsk (September 2014–February 2017). After concluding the Minsk agreements, Moscow proceeded as if the points of Ukraine's weakness lay in Berlin, Paris and Washington. Nominally, it claimed to 'want these [separatist] republics to be part of Ukraine'.[37] But in reality Russia sought to commit the West to a form of integration that would compromise Ukraine's territorial integrity and effectively derail its Euro-Atlantic course. The West's persistent search for compromise formulas has only demoralized Kyiv, as has endless reiteration of the mantra that 'both sides' should observe an agreement that has been significantly violated by only one. That said, the West has neither budged on the agreement's core provisions nor sought to coerce Kyiv into accepting Moscow's blueprint for settlement. Despite repeated war scares and incursions, Ukraine has not been provoked into reckless acts or lost its nerve. During the six-day engagement surrounding Avdiivka in February 2017, Ukraine's forces outmanoeuvred and defeated a Russian-commanded separatist force despite the latter's considerable advantage in artillery.

Phase 3: Destabilization. The more Russia insists on its commitment to the Minsk agreements, the more implausible the proposition becomes. On 18 February 2017, Putin signed a decree giving legal standing (albeit on a temporary basis) to the separatist republics' internal passports and introduced the Russian rouble as legal tender within those jurisdictions. In the ensuing weeks, with Moscow's blessing, the pro-Russian authorities in the ORDLO expropriated a number of Ukrainian state-owned and private enterprises that, despite hostilities, had been providing unoccupied Ukraine with anthracite coal, industrial components and tax revenue. The main impetus behind these seizures was the economic stringencies reducing Russia's subsidies to the republics. Fortunately for Moscow, the initially unsanctioned Ukrainian blockade of the ORDLO by veterans of the Anti-Terrorist Operation (ATO) provided a convenient pretext.[38, 39]

[34] Recordings of conversations with Sergey Glazyev: Office of Ukraine's Prosecutor General (2016), *Dokazy prychetnosti vlady RF do posyahannya na terytorial'nu tsilisnist' Ukrayiny* [Evidence of the involvement of the Russian authorities in encroachment on the territorial integrity of Ukraine], https://www.youtube.com/watch?v=l6K1_vHrJPU (accessed 26 Jul. 2017).
[35] The Insider (2016), 'Slava v Ukraine: Vzlomannaya perepiska Surkova. Chast' I' [Slava in Ukraine: The Hacked Correspondence of Surkov – Part 1], 26 October 2016, http://theins.ru/politika/34411.
[36] The Insider (2016), 'Slava v Ukraine: Vzlomannaya perepiska Surkova. Chast' II' [Slava in Ukraine: The Hacked Correspondence of Surkov – Part 2], 27 October 2016, http://theins.ru/politika/34558.
[37] Hirst, T. (2015), 'Putin's dream of reuniting the Russian empire is falling apart', Business Insider, 26 May 2015, http://uk.businessinsider.com/putin-puts-novorossiya-project-put-on-hold-2015-5.
[38] Rakhmanin, S. (2017), 'Ograblinniy Prezident' [The Robbed President], *Zerkalo Nedeli*, 17 March 2017, http://gazeta.zn.ua/internal/ograblinnyy-prezident-_.html.
[39] Grytsenko, O. (2017), 'Russian controlled Donbas splits further from Ukraine', *Kyiv Post*, 28 April 2017, https://www.kyivpost.com/ukraine-politics/russian-controlled-donbas-splits-ukraine.html.

Map 2: Eastern Ukraine, status of conflict, September 2017



Source: Ukrainian Ministry of Defence and Ukraine Crisis Media Centre.

Yet the broader purpose of Russia's latest efforts is becoming more visible. On 18 July, Aleksandr Zakharchenko, president of the so-called Donetsk People's Republic, decreed the establishment (ostensibly the revival) of the Federation of Malorossiya.[40] Unlike Novorossiya, which refers to a region of what is now Ukraine, Malorossiya (meaning 'Little Russia') is a historical (and, for Ukrainians, derogatory) term referring to almost all of Ukraine (19 of today's 26 oblasts, including Kyiv). In Zakharchenko's formulation, Kyiv would lose its status as national capital and be reduced to a 'centre of historical and cultural importance'.[41]

As much as in March 2014, Russia remains determined to get its way or make Ukraine ungovernable

The Kremlin was quick to distance itself from the Malorossiya initiative and reaffirm its adherence to the Minsk process. Inevitably, however, the situation was not as simple as that. Within hours, prominent Russian officials – including Leonid Kalashnikov, head of the State Duma's Committee for CIS Affairs – were praising the initiative.[42] The assessment by Surkov (whose lack of forewarning can be doubted) is indicative: 'All this hype around a fantasy state Malorossiya is *useful in general* [author's emphasis]. What is important is that Donbas is fighting not to get detached from Ukraine but for its integrity.'[43] In other words, Zakharchenko's proclamation – while not 'real politics', in the words of Boris Gryzlov, Russia's official representative to the Minsk Contact Group – signals nothing less than an escalation of ideological war against the Ukrainian state.[44] Its aim, according to details of an alleged meeting of the Russian state leadership released by the Security Service of Ukraine (SBU), is squarely to 'reset the ruling regime in Ukraine'.[45]

Yet as a component of hybrid war, ideological war is not limited to rhetoric. 'Hard' methods have also reappeared in unoccupied Ukraine. Since late 2016, these have included a campaign of assassinations against Ukrainian special forces commanders, which Ukraine's security services seem powerless to prevent.[46] Less dramatically, such methods also encompass growing militancy by the pro-Russian opposition (notably at the 9 May victory parade in Kyiv, where police were unwilling or unable to prevent the savage beating of Ukrainian ATO veterans); resourceful utilization of criminal groups to commit violent political acts; 'false flag' operations by supposed nationalists; cyberattacks; and, according to expert testimony, ever more brazen infiltration of law enforcement agencies and other state structures. Ukraine's decision to initiate the ATO in the spring of 2014, and to refrain from declaring war, was justified at the time as a means of respecting civil liberties, reassuring Western partners and facilitating diplomatic progress. Today, it is depriving Ukraine of the legal means to combat a holistic Russian effort to penetrate and sabotage the state. Current legislative efforts to intro-

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[40] On the origins of Malorossiya and the implications of Zakharchenko's initiative, see Edwards, M. (2017), 'Little Russia, Big Dreams', Open Democracy, 19 July 2017, https://www.opendemocracy.net/od-russia/maxim-edwards/little-russia-big-dreams-0.
[41] Interfax (2017), 'Glava DNR zayavil ob uchrezhdeniiy novogo gosudarstva Malorossiya' [Head of DPR declares founding of new state Malorossiya], 18 July 2017, http://www.interfax.ru/world/571007.
[42] RIA (2017), 'Deputat Gosdumiy schitaet neizbezhnym sozdanie gosudarstva Malorossii' [Deputy of State Duma considers the creation of Malorossiya inevitable], 18 July 2017, https://ria.ru/world/20170718/1498676570.html.
[43] Solovey, I. (2017), 'Malorossiya as an example of ideological war against Ukraine's integrity', *LB.ua,* 21 July 2017, https://en.lb.ua/news/2017/07/21/4175_malorossiya_example.html.
[44] For an impressive articulation of its aims, see Akopov, P. (2017), 'Ukraina obrechena snova stat' Malorossey' [Ukraine is destined to become Malorossiya], *Vzglyad*, 18 July 2017, https://vz.ru/politics/2017/7/18/879201.html.
[45] UNIAN Information Agency (2017), 'Putin orders intel services to achieve "reset of Ukraine's ruling regime" – SBU chief', 22 July 2017, https://www.unian.info/politics/2043429-putin-orders-intel-services-to-achieve-reset-of-ukraines-ruling-regime-sbu-chief.html.
[46] Most dramatically, the murder of Colonel of Military Intelligence (GUR) Maxim Shapoval in January 2017. Brown, D. (2017), 'A Ukrainian officer killed in a car bomb was reportedly investigating Russia for international court case', Business Insider, 28 June 2017, http://uk.businessinsider.com/the-ukrainian-officer-killed-car-bomb-was-investigating-russia-2017-6?r=US&IR=T.

duce a state of emergency in a selected number of eastern districts seem calculated more to solidify Poroshenko's electoral position than to strengthen national security.

The audit of war

Engels once warned that 'war puts nations to the test, pronouncing its sentence of death on social organisms that have grown calcified'. The conflict that began in 2014 has yet to pronounce its sentence on Ukraine. Indeed, the struggle is far from over. At the start of 2017, hopes in the West were growing that Russia's aggressiveness against its neighbour had peaked. This forecast is premature and possibly mistaken.

At the outbreak of the First World War, Lenin resolved to transform the conflict from an interstate war into an international civil war between proletariats and ruling elites. This mode of thinking retains its hold over those who now frame Russian foreign policy. One dare not lose sight of this, because from Moscow's standpoint the conflict in Ukraine is one between Russia and a Western bloc determined to shatter the unity of Russian civilization. Today, Lenin's methodology is evident on three levels. First, Moscow seeks to persuade influential voices in Europe and North America that the war in Donbas is a civil war in which Russia is a legitimate stakeholder rather than a belligerent. This gambit has not failed completely, because ignorance about Ukraine is widespread and the resources Russia devotes to sustaining its own narrative are formidable. Moreover, the 'civil war' paradigm contains elements of truth. The war in Ukraine is an interstate conflict, but like other irregular wars that Russia has fought on its periphery, it has civil and internecine dimensions. Blurring the frontiers between the two is both an aim and a method of what we now call 'hybrid war', but it has a long pedigree.

Second, much of Russia's hybrid methodology is being applied across Europe and the US. Russia is not the author of the West's post-modern discontents. But it has identified them, and has invested in fuelling the underlying grievances with intensity and on an ambitious scale. Possibly, it has done this too well, making its hand in the domestic affairs of other countries odiously visible and thereby damaging to its own cause.

The economic inequalities between different groups and regions are a latent threat to stability at least as great as Russian infiltrators

Third, despite the importance of what Russia is doing elsewhere, it is in Ukraine that the employment of its hard and covert tools threatens state survival. As much as in March 2014, Russia remains determined to get its way or make Ukraine ungovernable. This is understood by a solid majority of Ukrainians. For the most part, Russia's narrative and methods have been manifestly counterproductive: entrenching images of it as the enemy where these perceptions already existed, and arousing the hostility of many who had once regarded the Russians as a kindred people.

But such views are not universal. In much of the Donbas region, the war has produced alienation and a distrust of all sides. In some districts wrested from separatist control, identification with Ukraine is weaker than it was in 2014. This partly reflects the migration of younger, more professional and better-educated cohorts of the population to comparatively 'normal' regions of Ukraine, many of which are experiencing a new economic dynamism. It also reflects the failure of Ukraine's authorities to counter the reach of Russia's intensive and delusory media coverage and, more abjectly, their apparent indifference to the social and material needs of regions battered by war. Elsewhere, the daily inconveniences of life have been borne with remarkable stoicism, but the economic inequalities between different groups and regions are a latent threat to stability at least as great as Russian infiltrators. Thus far, Russia's attempts to subor-

dinate Ukraine have mostly aroused defiance rather than submission. But it would be perilous to take the forbearance of Ukrainians for granted.

It is equally important that Ukraine's leaders respect the basis of national solidarity and do nothing to damage it. The architects of Ukraine's post-1991 statehood, as well as its Euro-Atlantic orientation, were in significant measure members of Russian-speaking, eastern Ukrainian elites. The ethos of the state, faithfully represented in the 1996 constitution, has been civic, ecumenical and plural. As noted in an earlier Chatham House report: 'Between 1992 and 2014, it was the absence of conflict across ethnic, confessional and linguistic lines that was noted by the UN, OSCE and PACE (the Parliamentary Assembly of the Council of Europe).'[47] For good and natural reasons, the war has revived respect for the Ukrainian character of Ukraine. But there comes a point at which cultural Russophobia becomes the toxin rather than the antidote. The language provisions of the 25 September 2017 Education Act might pass this point, further damaging relations not only with Russia but with Hungary, Romania and Poland as well.[48]

However relations between Russia and the West evolve, Ukraine will remain the key protagonist in its own drama. As former president Leonid Kuchma said 20 years ago, the test of independence is 'the ability of the country to pull together at a crucial moment'. Three-and-a-half years of conflict have demonstrated that this ability exists. But it is not inexhaustible, and it remains dependent not only on Western steadfastness but on the moral clarity and political wisdom of Ukraine's leaders and on the fortitude of its people.

[47] Giles, K., Hanson, P., Lyne, R., Nixey, J., Sherr, J. and Wood, A. (2015), *The Russian Challenge,* Chatham House Report, London: Royal Institute of International Affairs, p. 24, https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20150605RussianChallengeGilesHansonLyneNixeySherrWoodUpdate.pdf.

[48] Whereas the draft version guaranteed the right of national minorities 'to learn their native language at state and municipal educational facilities', the adopted version confines this right to 'pre-school and primary education'. At present, 365,000 pupils attend Russian-language schools, 19,000 Romanian and Moldovan schools, and 16,000 Hungarian schools. Note that only 15 per cent of Ukraine's residents now declare Russian as their native language. See Dąborowski, T., Piechal, T. and Sadecki, A. (2017), 'Ukraine: a blow against the national minorities' school system', Centre for Eastern Studies (OSW), Warsaw, 27 September 2017, https://www.osw.waw.pl/en/publikacje/analyses/2017-09-27/ukraine-a-blow-against-national-minorities-school-system.

3. European Integration

Kataryna Wolczuk

The political, geopolitical and economic implications of the EU–Ukraine Association Agreement (AA) are highly significant. For Ukraine, the agreement provides a potential stimulus for profound and comprehensive reforms of the state and economy. For the EU, the agreement is a litmus test for its foreign policy at a time when Russia is sparing no efforts to punish Ukraine for seeking closer ties with Europe.

Signed in March 2014, the Association Agreement commits Ukraine to broad cooperation with the EU, including policy and regulatory convergence in a wide range of areas. The pact also contains provisions specific to trade, required to ensure Ukraine's access to the EU's single market, covered principally in an economic part of the agreement, the Deep and Comprehensive Free Trade Agreement (DCFTA).[49] The combined AA-DCFTA fully entered into force on 1 September 2017, although the DCFTA started to be provisionally applied in January 2016.

This chapter explores the challenges Ukraine faces in meeting its new commitments under the AA-DCFTA, and surveys the progress (and setbacks) to date. A closer relationship with the EU has strong appeal for a Ukrainian population weary of corruption and economic hardship, and eager for better governance and higher living standards. The clear hope among supporters is that, by prompting Ukraine to adopt EU-derived rules and standards, implementation of the AA-DCFTA can transform political life and the economy.

However, the 'local terrain' presents an array of obstacles to rapid and effective reform. Implementation of the AA-DCFTA is hampered in the first instance by Ukraine's decayed state institutions and economic difficulties – problems that are exacerbated by Russia's coercive actions. Reforms are also impaired by what can be termed Ukraine's 'dual realities' on the ground, namely the peculiar mismatch between formal laws and informal practices. Institutions are used by insiders to extract rents rather than to deliver public goods for society as a whole. Where reforms threaten to curtail the flow of rents, they meet strong and persistent resistance from state officials and much of the current political elite.

So daunting are its challenges that Ukraine has received unprecedented support from the EU, exceeded only by the level of assistance reserved for accession countries. However, the technocratic rule diffusion in which the EU excels is not sufficient to overcome resistance to reform. Experience so far shows that the EU needs to combine its diffusion of technical rules with building state capacity and applying a high level of political pressure, even on specific Ukrainian individuals. The EU should also more explicitly support reformist actors, especially within civil society, who are under pressure from the Ukrainian authorities.

The AA-DCFTA: commitments and challenges

The AA-DCFTA between Ukraine and the EU is the longest and most detailed agreement of its kind. It is a state-of-the-art exemplar of the 'new generation' of ambitious and comprehensive free-trade agreements (FTAs), which have increasingly superseded simple tariff-reduction and investment access deals to include 'beyond border issues', such as harmonization of regulations on product standards, anti-monopoly policy and public procurement. The agreement is dynamic and designed to have built-in flexibility, enabling the common bodies to change some of its annex provisions where necessary in the future. While stopping short of offering a route to EU membership, the agreement

[49] For a compact and accessible analysis of the AA-DCFTA, see Emerson, M. and Movchan, V. (eds) (2016), *Deepening EU-Ukrainian Relations. What, why and how?*, London: Rowman & Littlefield International.

provides for a far-reaching and privileged relationship with the explicit aim of Ukraine's economic integration within the EU's internal market. Very few EU agreements with so-called 'third countries' provide such extensive access to the single market.

The AA-DCFTA contains detailed and binding provisions that require Ukraine to align its laws and policies with those of the EU (the *acquis communautaire*), in a complex process known as 'legal approximation'. In addition to tariff elimination, the deal gives special prominence to institutional and regulatory convergence with EU templates. This approach reflects the centrality in EU policymaking of sector-specific, technical and internationally applicable rules. It also highlights the agreement's broader purpose of socio-economic and political modernization.

The paradox for Ukraine is that the very problems that the AA-DCFTA seeks to address – limited administrative capacity, weak rule of law and a weak economy – are those that hamper the implementation of the AA-DCFTA

The problem with this framework, however, is that the AA-DCFTA is modelled on agreements that were never intended to be used for a situation such as Ukraine's. The AA-DCFTA is similar in many of its objectives to the pre-accession deals drafted for countries seeking to join the EU, but with the crucial difference that the *acquis* is not, and was not designed to be, a blueprint for modernization of countries at a lower level of economic and institutional development. The *acquis* was actually developed for more advanced 'market economies' as part of the overall process of forming the EU's single market. Some parts of the *acquis* are so sophisticated and complex that even EU member states struggle to implement them. The paradox for Ukraine is that the very problems that the AA-DCFTA seeks to address – limited administrative capacity, weak rule of law and a weak economy – are those that hamper the implementation of the AA-DCFTA.

Three other concerns about the agreement stand out. The first is that no roadmap exists for Ukraine's economic integration with the EU. The AA-DCFTA envisages the approximation of 80–90 per cent of the *acquis* related to the single market, but there are no estimates of the scale and scope of the overall or sectoral adjustments (or size of investments) needed for implementation. Individual EU officials, project leaders and experts are heading into the unknown, tasked with devising a suitable pathway to legal approximation across different institutions and sectors.

The second concern is that the agreement is not yet sufficiently customized to Ukraine's needs. In many respects, the AA-DCFTA represents 'best practice' rather than the 'best fit'. It exports a sophisticated body of rules to an idiosyncratic Ukrainian context in which basic problems such as weak institutions and rule of law are yet to be addressed. The obligations listed by the AA-DCFTA vary across sectors, but transposition of the *acquis* is not necessarily a simple and cost-effective recipe for reforms. Much work is needed to operationalize implementation of the agreement in order to devise the best fit for the domestic context.

Third, the agreement lacks strong mechanisms, including sanctions, which could be used in the event that one of the sides (most likely Ukraine) fails to meet its obligations. The possibility cannot be ruled out that resistance to reforms proves stronger than expected. If this occurs, and if Ukraine suffers few material consequences for non-compliance,[50] the EU could lose the very leverage over policy in Ukraine that the agreement is intended to create.

[50] In the spring of 2017, some Ukrainian officials asked to move beyond the current Association Agreement and start negotiations on 'more enhanced relations'. This was a surprising and unproductive move. The EU is certainly not ready to start discussing a new format in EU–Ukraine relations until the AA-DCFTA has been implemented. This raises the question as to why the issue was raised. It seems that the initiative was a pre-emptive ploy to counter EU criticism of Ukrainian policymaking, the idea being that if the EU criticized Ukraine for not implementing reforms, the Ukrainian side would be able to argue that the EU was not in a position to 'tell them what to do' since it had refused to enhance relations with Ukraine. However, there are good reasons for revising the tariffs and tariff-free quotas in the DCFTA part of the AA, something which can be done if the EU and Ukraine agree to change these provisions of the AA.

Box 2: The EU–Ukraine Association Agreement

The EU–Ukraine Association Agreement (AA) is very complex treaty with a sophisticated, multi-layered structure, including numerous, often very long, annexes. Its content is best grasped when divided into four main parts:[51]

- Part I. Political Principles, the Rule of Law and Foreign Policy
- Part II. Deep and Comprehensive Free Trade Agreement (DCFTA)
- Part III. Sectoral Cooperation
- Part IV. Institutional Provisions

Part I
This deals with political issues, ranging from democracy, human rights and the rule of law to anti-corruption policy and foreign and security policy. Arguably, this part of the agreement represents what could be termed 'soft law', in the sense of containing political pledges and 'best endeavour' clauses in respect of cooperation. However, European values, such as democracy and support for human rights, are defined as essential to the agreement, and violations of these principles can result in its suspension.

Part II
The DCFTA is a particularly substantive part of the Association Agreement, dealing with core trade aspects of bilateral relations. Many of the Association Agreement's extensive annexes pertain to the DCFTA.

The DCFTA part of the agreement covers the sophisticated 'legal approximation' mechanisms required to ensure uniform interpretation and effective implementation of relevant EU legislation in Ukraine. The 'deep' economic integration envisaged by the DCFTA requires extensive legal and regulatory approximation. The AA-DCFTA is designed to be future-proof, and thus includes several mechanisms to accommodate dynamic evolution of the EU *acquis communautaire*.

An important feature of the DCFTA is far-reaching conditionality: market access is subject to specific and continuous monitoring of compliance. To ensure this, the Ukrainian government is obliged to report periodically to the EU according to approximation deadlines specified in the agreement. The monitoring procedure may include sending investigatory missions to make on-the-spot inspections, with participation from EU institutions, bodies and agencies, non-governmental bodies, supervisory authorities and independent experts. The strict conditionality in the DCFTA reflects the EU's cautious approach to opening up the single market to post-Soviet countries, which have less developed political and economic systems than those of most EU member states.

Part III
This deals mainly with economic cooperation and covers 14 'sectoral' issues, including energy, transport, financial services, agriculture and civil society. Provisions on some sectoral issues, such as 'services', are as complex and detailed as those in the DCFTA. This is a very-wide ranging section of the agreement, and it underlines the breadth of this comprehensive treaty.

[51] This follows the structure adopted by Emerson and Movchan (eds) (2016), *Deepening EU-Ukrainian Relations. What, why and how?*

Part IV
This deals with the legal and institutional provisions. The Association Agreement has a sophisticated dispute resolution mechanism and a sophisticated institutional architecture. Within this structure, a key body is the Association Council. The Council meets at ministerial level. It operates as a forum for exchange of information and is also competent to update or amend the agreement's annexes to keep pace with evolutions in EU law.

The deliberately dynamic structure of the Association Agreement makes it distinct from the previous EU–Ukraine pact, the 1994 Partnership and Cooperation Agreement (PCA). The PCA was a fixed and static agreement, meaning that its common bodies could not change and adapt its content. In contrast, the new Association Agreement allows for some updates and amendments. However, revisions are only possible with regard to the annexes – the Council cannot change the main body of the agreement, not least because this would trigger a complex ratification procedure involving the two parties, with a particularly drawn-out procedure in the EU.

The Association Agreement came into force on 1 September 2017, following a lengthy ratification procedure within the EU (see timeline, Box 1, Chapter 1).

Source: Wolczuk, K. (2017), *Demystifying the Association Agreements. Review of the Trilogy of Handbooks: on the EU's Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTAs) with Georgia, Moldova and Ukraine*, Brussels: Centre for European Policy Studies, http://www.3dcftas.eu/publications/other/demystifying-association-agreements-review-trilogy-handbooks-eu%E2%80%99s-association.

European integration and Ukrainian realities

Despite a measure of reformist rhetoric, very little systematic economic or political reform occurred in Ukraine prior to the so-called 'Revolution of Dignity' in 2014. Instead, from the very first days of independence in 1991, Ukraine was overwhelmed by 'a process of institutional erosion [that] led to a weakening of the constraints on state actors and a blurring of the boundaries of acceptability between formal, rule-based behaviour and informal actions for private gain'.[52] As in most other post-Soviet states, policies and goals were undermined and institutions became the private fiefdoms of powerful actors.[53] Transformation in the future will depend on the reformers 'taking control' of these institutions to ensure a focus on delivering public goods for society as a whole, rather than on generating rents for a few insiders. It will also depend on Ukraine ending a long tradition of what could be termed 'declarative Europeanization', in which officials fluently use the rhetoric of integrating with the EU while failing to put promises into practice. All too often, the authorities in effect mimic reforms without truly implementing them.

The Ukrainian authorities

Integration with the EU affects virtually all aspects of Ukrainian policymaking and requires strong institutional coordination. Yet the constitutional system, though fairly effective in protecting against the monopolization of power, does not provide for effective government. The 2004 version of the constitution, re-introduced in 2014 after the Euromaidan protests, created a 'split executive' consisting of two decision-making

[52] Leitch, D. (2016), *Assisting Reform in Post-Communist Ukraine, 2000–2012. The Illusions of Donors and the Disillusion of Beneficiaries*, Stuttgart: ibidem Press, p. 69.
[53] Kosals, L. and Maksimova, A. (2015), 'Informality, crime and corruption in Russia: A review of recent literature', *Theoretical Criminology* 19(2), doi:10.1177/1362480615581099, p. 279.

centres: a cabinet responsible for most policy areas; and regional-level and law enforcement structures controlled by the president. This split structure creates major difficulties: on the one hand, it hampers policymaking by blurring lines of authority; on the other, it provides ample channels to resist reforms (for example, by allowing the president to veto legislation). International donors struggle to understand the logic behind such a byzantine system. The National Reform Council, created in 2014, is designed to overcome these problems. It brings together the president, prime minister, ministers and parliamentarians, as well as business and international representatives. However, it has not yet developed into a strategic decision-making centre. As one EU expert put it: 'Any other system would be better than this dysfunctional hybrid.'[54]

Structural deficiencies in the executive branch are amplified by problems in the Verkhovna Rada, Ukraine's unicameral parliament. Although the October 2014 election brought to power a wave of new members of the Rada, pro-reform forces in the legislature remain fragmented and weak, and vested interests entrenched. Factions and political parties often consist of little more than groups of people gathered around prominent political figures, such as President Petro Poroshenko or former prime minister Yulia Tymoshenko, both of whom are prone to populist rhetoric and policies. At the same time, the Presidential Administration hampers constructive policy development by neutralizing reformists in parliament.

Real (rather than merely rhetorical) European integration lacks support within the Verkhovna Rada. Various EU initiatives have had little traction

Real (rather than merely rhetorical) European integration lacks support within the Verkhovna Rada. Various EU initiatives, such as the Pat Cox-led European Parliament mission to Ukraine aimed at strengthening and improving the role of the legislature, have had little traction. Domestically, the Parliamentary Committee on European Integration lacks proper leadership, and has been unable to establish itself as a coordination centre or to overcome political resistance to the AA-DCFTA. On average, it takes one year to deliberate and pass a law in the Verkhovna Rada.[55] In 2014–15, an important package of laws on sanitary and phytosanitary standards, technical standards, competition and state aid was passed relatively quickly. But since then, key stakeholders and interest groups have resisted other measures, such as environmental impact assessments, on the grounds of cost. In contrast, laws needed for 'export reorientation' (to facilitate the penetration of Ukrainian exports into EU and other markets), which are of interest to many business tycoons, are passed relatively quickly.

It is clear that stakeholders in the current rent-based system are unwilling to level the playing field for other domestic and international businesses. The logic of rent-seeking – rather than competition and profit – remains entrenched. On many DCFTA-related issues, reform fails from a lack of political support. For example, policy initiatives relating to transport, the gas market and intellectual property rights have all been blocked in the Verkhovna Rada. Many other measures remain incomplete, and infighting occurs around virtually every draft law. The Bloc of Petro Poroshenko (BPP), the largest political faction in parliament, is internally divided between supporters and opponents of reform, with the former frequently taking positions in opposition to those of the Presidential Administration.

Within the cabinet, European integration at least has formal recognition as an issue but is still not a priority. Responsibility for the portfolio sits with the deputy prime minister for European and Euro-Atlantic integration. The EU insisted on the creation of this dedicated position to improve coordination on the AA-DCFTA. Yet while Ivanna

[54] Interview with an expert from an EU member state, Kyiv, February 2017.
[55] Interview with a civil society expert, Kyiv, February 2017.

Klympush-Tsintsadze, appointed to the role in the spring of 2016, has been active in the international arena, European integration has not risen higher up the agenda.

The deputy prime minister heads the Governmental Office for European Integration (GOEI), which sits within the secretariat of the Cabinet of Ministers. The GOEI was established in June 2014 with a nominally strong mandate – a group of experts wrote a comprehensive concept for the office, intending to create a powerful policy coordination centre. New staff were recruited, and the department's relevant expertise started to grow. However, by the summer of 2016 – after a new prime minister, Volodymyr Groysman, had taken office – most had left the GOEI, rendering it largely incapable of fulfilling its wide-ranging tasks. Of the original 30–40 staff, most of those who remained had little experience. Moreover, the GOEI's portfolio requires not dozens, but hundreds, of well-trained officials. Besides European integration, it is responsible for regional development, transatlantic relations and reform of public administration. In its current state, the office lacks the necessary formal competencies, personnel and budget to handle a mandate of this size and complexity. The GOEI's scope of operation is simply too broad, and its standing within the government too weak, for it to be effective.

With the deputy prime minister lacking real political backing[56] and the GOEI unable to override opposition to reform within parliament or the government, no single centre oversees European integration. The Ministry of Economic Development and Trade (MEDT), in charge of international assistance, has been coordinating activity on the DCFTA. But this creates the problem of overlap between the GOEI and the MEDT. The Ministry of Foreign Affairs also wants to be involved in EU-related matters. With no leadership or ownership of the reform process, 'everything seems soft and fluid', in the words of one EU expert.[57]

Overall, the lack of strategic and financial planning around implementation of the AA-DCFTA reflects a measure of indifference to European integration among political leaders in Ukraine, and a profound lack of understanding of the processes involved. Lacking unity and an overarching strategy, the government is failing to provide leadership for reform in general and implementation of the AA-DCFTA in particular.

Pro-reform coalitions

Despite these problems, important changes are taking place as policymakers adapt their approaches. In the pre-Euromaidan period, mid-level officials typically promoted policies within their own ministries and agencies, often teaming up with international experts to create pro-reform enclaves that acted as informal policy transfer networks.[58] But such enclaves were often weak and isolated. As a rule, they failed to overcome the resistance of anti-reform players intent on protecting rent-seeking networks.

Since 2014, pro-reform groups have developed stronger and broader coalitions to promote reforms of policies and institutions, from public administration to the anti-monopoly agency. These coalitions have emerged across different institutions and sectors, and consist of a variety of actors, including reform-minded politicians,

[56] Klympush-Tsintsadze is a member of the BPP but does not belong to any core group within the bloc that could provide her with reliable political support. This underscores the dysfunctional composition of the BPP.
[57] Interview with an EU expert, Kyiv, February 2017.
[58] Leitch (2016), *Assisting Reform in Post-Communist Ukraine, 2000–2012*. See also Wolczuk, K. (2009), 'Implementation without Coordination: The Impact of the EU Conditionality on Ukraine under the European Neighbourhood Policy', *Europe-Asia Studies* 61(2), doi: 10.1080/09668130802630839.

state officials, members of civil society, members of the media and international experts. At the same time, the rise of such coalitions has been fostered by somewhat more favourable political conditions for policy advocacy: some ministries, such as the Ministry for Ecology and Natural Resources, now have reformists at the helm; in other ministries, such as the MEDT, reform-minded figures among top officials are helping to drive reforms even though they lack the political mandates of their opponents.

Since 2014, pro-reform groups have developed stronger and broader coalitions to promote reforms of policies and institutions. These coalitions consist of a variety of actors, including reform-minded politicians, state officials, members of civil society, members of the media and international experts

International support is also helping. For example, to strengthen pro-reform enclaves, in 2017 the EU set up a programme to pay higher salaries to staff in as many as 2000 designated 'reform posts' in the central government. The idea was for funding to continue until reforms generated sufficient budgetary gains to sustain higher salaries in other positions as well. The programme enabled the establishment of dedicated reform support teams in individual ministries. As a result, for example, the Ministry of Infrastructure, hitherto a reform laggard, now has a 20-strong team tasked with devising a reform strategy for the ministry. In addition to providing funding and expertise, international donors – most notably the EU – are able to apply limited pressure through conditionality. The EU Delegation to Ukraine issues public statements prior to votes in the Rada on important reform- and EU-related laws. These interventions play a crucial role in pushing reformist laws through parliament.

Within civil society, meanwhile, a coalition called the Reanimation Package of Reforms (RPR) has emerged as a key actor in pooling the efforts of NGOs and experts to facilitate and implement reforms (also see Chapter 6). The RPR has been involved in preparing and lobbying for many laws related to European integration, as well as in overseeing their subsequent implementation. Journalists support the process by publishing information on reform measures, often in real time, and by drawing attention to various efforts to sabotage reform.

The emergence of the National Anti-Corruption Bureau of Ukraine (NABU) represents an early – though still tentative – success story for Ukraine's reform coalitions (see Chapter 7). The creation of the NABU in 2015 was one of the EU's conditions for visa liberalization for Ukraine. The involvement of the European Commission's European Anti-Fraud Agency (OLAF)[59] in the selection and nomination of Ukrainian and European staff for the NABU appeared to ensure an unprecedented degree of independence for the new body.

Despite its promising beginnings, political tensions over control of the NABU have persisted. They are indicative of the covert political warfare that still surrounds every aspect of institutional and economic reform in Ukraine.[60] This experience indicates the importance of external conditionality, as well as the need for continuous vigilance and pressure from reform coalitions at every step of the policymaking process.

Overall, it is evident that reform coalitions continue to encounter significant resistance both in parliament and in many parts of the government. The Ministry of Interior, for example, which controls the police and National Guard, remains ridden with inefficiency and corruption. Clearly some politicians (across all political parties) still see reforms as optional or even as a threat to their careers. Nonetheless, opposition to reforms – and even the sense of a creeping restoration of the old order – has

[59] Office européen de lutte antifraude.
[60] This resistance was evident, for example, during the appointment of the auditors of the NABU. The auditors have the exclusive power to dismiss the NABU's head. It was also evident in the resistance of parliament to authorizing the NABU to conduct wire-tapping. There is no political will in support of an effective, fully fledged corruption investigation agency.

not derailed the determination of reformers to spearhead the country's systemic transformation. Instead, it has brought the scale of the problem and the depth of resistance into view.

Coping with Ukrainian realities: EU policy and adaptation

The EU has provided Ukraine with a level of assistance well beyond that usually offered to 'third countries', and exceeded only by its support to accession countries. The EU is the biggest donor in Ukraine, having provided almost €11 billion during 2014–17 (with microfinancial assistance alone amounting to €3.4 billion in that period). The EU Delegation to Ukraine is the EU's second-largest delegation in the world.

Legal approximation of the EU's *acquis* is usually regarded as 'low politics', as a technocratic process in other words. However, the reforms envisaged under the AA-DCFTA have a potentially high political impact. Recognizing that it is not enough to focus on assisting legal approximation alone, EU institutions are seeking to support capacity-building in Ukraine's state institutions.

The EU has provided Ukraine with a level of assistance well beyond that usually offered to 'third countries', and exceeded only by its support to accession countries

One noteworthy innovation in this respect, pioneered by the European Commission, was the formation of a dedicated Support Group for Ukraine (SGUA). Established under the initiative of the then president of the Commission, José Manuel Barroso, in early 2014 and continued under Jean-Claude Juncker, the SGUA consists of officials from the Commission and EU member states. It is headed by Peter Wagner, and has become, in the Commission's words, a 'catalyst, facilitator and supporter of reform'.[61]

The SGUA has been central to coordinating the efforts of European donors. It acts as a strategic centre for the development of local knowledge, utilizing linkages with various parts of the Commission, such as the Directorate-General for Trade and Directorate-General for Energy, as well working with institutions in Ukraine to identify needs and deliver assistance. This is a massive task given that about 260 assistance projects – including 18 large flagship initiatives – in Ukraine are funded by the EU and member states. Some EU member states, however, still work on their own, bypassing the SGUA.

Coordination of assistance is complicated by the clustering of donors around specific aspects of reform. For example, in 2016 an estimated 480 consultants were working on decentralization (devolving competences from the central government to the regional level), a favourite theme of international donors.[62] Such situations make overlap and duplication of mandates and effort almost unavoidable. There is a clear risk that at least some of the decentralization projects will create inefficiencies.[63]

The SGUA has nonetheless made a noticeable difference in devising a more agile and tailored strategy for promoting reforms. Within the European Commission's Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR), this more dynamic approach has been supported by the commissioner, Johannes Hahn, and the deputy director-general, Katarína Mathernová, who have adapted the nature of EU assistance to Ukraine in response to challenges on the ground.

[61] European Commission (2016), *Support Group for Ukraine: Activity Report: The first 18 months*, October 2016, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/neighbourhood/pdf/key-documents/ukraine/20161028-report-sgua.pdf.
[62] Comments by Oksana Syroid, deputy parliamentary speaker, DGAP conference, Kyiv, September 2016.
[63] See Leitch (2016), *Assisting Reform in Post-Communist Ukraine, 2000–2012*.

Assistance has become more systemic, addressing the dysfunctionality of Ukrainian institutions through a shift – as mentioned above – towards capacity-building.

Most of the reforms launched to date have been related to European integration. They have included initiatives on sanitary and phytosanitary standards, judicial reform, technical standards, energy, public procurement, decentralization and tackling corruption. Sectors not directly related to European integration have received relatively little assistance in the first instance from the EU or other international donors, even though policy in several of these areas – such as public health, education, infrastructure and social policy – attracts considerable public interest. In recognition of this gap, the EU has become more involved in both healthcare and social policy reforms in an effort to provide demand-driven support.

Despite the SGUA's successes, few tangible results are in evidence as of 2017. The most successful policies so far have resulted in the creation of *new institutions and systems* – examples include the NABU, an 'e-declaration' system for electronic asset declarations and the ProZorro electronic public procurement system (see Chapter 6 in particular). Reforming *existing institutions* has proven far more difficult, even though these are the target of most of the EU's assistance. Paradoxically, capacity-building projects often struggle to achieve results because the state institutions with which they collaborate lack 'absorption capacity'.

The most successful policies so far have resulted in the creation of new institutions and systems, whereas reforming existing institutions has proven far more difficult

A further problem is that EU officials are reluctant, as a rule, to engage on a political level.[64] The lack of the prospect of EU membership is often cited as one of the reasons why the EU cannot be too demanding in terms of reform expectations, given that Ukraine is a 'third country' rather than an accession candidate. EU officials are aware that excessive reform zeal could have unintended political consequences. According to one official, they are apprehensive about 'pushing too hard as Ukraine may end up with a different government'.[65] From an EU perspective, working with the current pro-European administration in Kyiv is preferable, despite the slow pace of reform, to triggering a change of political leadership by undermining the government's popular legitimacy. EU officials typically put a premium on stability and predictability rather than change.

However, 'going too easy' on Ukraine carries its own risks. Given the resistance they encounter, some EU officials show an unwarranted level of trust and empathy towards their Ukrainian counterparts. The EU's indulgence of the ruling elites in Ukraine threatens to repeat the flawed strategy *vis*-à-*vis* Moldova, where the EU supported a pro-European government out of fear of a return to power by the Communist Party. Suitably emboldened, the Moldovan governing elites used reformist, pro-European rhetoric as a 'fig leaf' to mask their true hostility to substantive reforms, and duly continued to engage in extensive rent-seeking. This fostered the perception among the public that the EU had colluded with self-serving elites in promoting corruption in Moldova. The resulting popular disillusionment paved the way for the election of a pro-Russian president in 2016.[66] As Ukrainian citizens become more frustrated

[64] There have been some valiant examples of more determined engagement, such as those by the EU Delegation during the tenure of Jan Tombinski. His timely intervention broke the deadlock over electronic asset declarations by warning that failure to pass the relevant law would endanger Ukraine's progress towards visa liberalization. See Gressel, G. (2016), *Keeping up appearances: How Europe is supporting Ukraine's transformation*, London: European Council on Foreign Relations, October 2016, http://www.ecfr.eu/publications/summary/keeping_up_appearances_how_europe_is_supporting_ukraines_transformation.
[65] Interview with an EU official, Kyiv, February 2017.
[66] For example, during a focus group on EU–Moldova relations in Chisinau in May 2014, some participants claimed – when asked the role of the EU in Moldova – that 'the EU promotes corruption'.

with the slow progress of reforms, any reluctance on the part of EU officials to criticize the government could create a similar impression of indifference, or even collusion.

This leaves EU officials in a difficult position. They rely on the pro-European rhetoric of some Ukrainian politicians and officials to create political will and galvanize support for reform. Yet in giving the benefit of the doubt to the Ukrainian political class, the EU may in effect be turning a blind eye to policy obstruction, thereby inadvertently undermining its own credibility as a constructive actor in Ukraine.

As Ukrainian citizens become more frustrated with the slow progress of reforms, any reluctance on the part of EU officials to criticize the government could create an impression of indifference, or even collusion

Many aspects of EU assistance are not yet fully attuned to the specific challenges of Ukraine's 'dual realities'. As one EU official put it: 'Organizationally, we don't really care that it's a challenging country. Ukraine is different, but nobody takes notice of this and draws lessons.'[67] Many EU officials overestimate the political will and capacity of formal institutions inside Ukraine to eradicate informal rent-seeking networks and practices. For example, the Anti-Monopoly Committee (AMC) has benefited from international assistance and pursued a visible reformist agenda since 2014. Yet despite its expertise and mandate, the AMC remains too weak to confront powerful political and economic players, such as those in the highly monopolized energy sector, where companies owned by business tycoons (notably Rinat Akhmetov and Dmytro Firtash, owners of regional electricity and gas distribution companies, respectively) are dominant. In light of these fundamental constraints, the AMC cannot achieve its goals through technical assistance alone.[68] High-level political pressure needs to be exerted on the Ukrainian government, so that vested interests in political life and the economy can be curtailed.

The nature of this challenge is perhaps best illustrated by the programme of the European Union Advisory Mission to Ukraine (EUAM) to assist reforms in the civilian security sector. This sector comprises agencies responsible for law enforcement and the rule of law, including the Ministry of Interior, the Security Service of Ukraine (SBU) and the Prosecutor General's Office (PGO). The EUAM team of over 200 international advisers from EU member states brings a considerable degree of expertise to what is supposed to be 'a joint effort to expedite the civilian security sector reform'.[69] However, the presence of such a large contingent of experts does not guarantee effective international support for reforms. If anything, it illustrates the classic shortcomings of technical assistance, as the Ministry of Interior, one of the major beneficiaries of EUAM assistance, remains largely resistant to reforms. Ukrainian leaders often depend on extra-legal means to enforce loyalty and intimidate opponents, so there is little appetite within the political establishment for deep-rooted reform of law enforcement. Meanwhile, the 'business as usual' implementation of the EUAM's technical recommendations undermines the reputation of the EU because:

> … ineffective aid is actually damaging to Ukraine, as it fills in the vacuum created by the lack of reforms with a pointless process of aid programmes that cannot possibly reach their declared goals.[70]

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[67] Interview with an EU official, Kyiv, February 2017.
[68] Interview with an EU official, Kyiv, February 2017. For a perceptive overview of the anti-monopoly policy, see Shavalyuk, L. (2016), 'The daily life of cartels', *Ukrainian Week*, No. 11, December 2016, http://ukrainianweek.com/Economics/180154.
[69] The EUAM's mandate is divided into three pillars of activity: 1) strategic advice on civilian security sector reform; 2) support for the implementation of reforms, through hands-on advice and training; and 3) cooperation and coordination between Ukrainian authorities and international actors.
[70] Granovsky, V. and Nanivska, V. (2010), 'Eurointegration: Rest', *Inside Ukraine*, No. 11, Kyiv: International Centre for Policy Studies, p. 15.

Ukrainian reformers find it difficult to understand why EU officials 'do not stand up more and bang the table' when the Ukrainian government fails to enact its reform pledges.[71]

The EU's position on a recent programme of macroeconomic assistance is a case in point. In 2015, the EU offered Ukraine a package of support to be disbursed in three tranches, subject to a number of conditions. The first tranche was delivered in 2015. The second was delayed because the Ukrainian government had not met all the necessary conditions. Indeed, it had introduced further trade irritants, such as a ban on wood exports. Yet the EU still showed a high degree of indulgence towards the Ukrainian authorities (some in Ukraine would even call it naivety), ultimately disbursing €600 million in funding while praising the country's political elites for progress on reforms. The main reason for the EU's decision to release this second tranche in 2017, despite Ukraine's non-compliance with relevant conditions, was that the funds would otherwise have been reassigned to different projects.

Ukrainian observers have drawn attention to the profound implications of the EU's weak enforcement of conditionality:

> So far, the EU and the IMF (through their financial aid) were the main stimuli for reform implementation. But what if the EU through its own actions destroys these incentives? This is especially at the time when hopes for the political will of the government has almost evaporated. Will the EU continue to insist that the Ukrainian government fulfill its obligations? […] As a result, the price of EU's macro-economic assistance to Ukraine may be higher than the refusal to disburse these funds. What is more important for the country: 600 million euros or reforms? The government and society may have different answers to this question.[72]

The DCFTA, Russia and trade reorientation

Ukraine's integration into the EU's single market is a long-term objective of the DCFTA, which provisionally came into force in January 2016. Since 2013, the EU has been Ukraine's largest trading partner, accounting for over 40 per cent of the latter's trade in 2016. Ukraine's main exports to the EU are metals, grains, electrical machinery and equipment, ore and slag, fats and oils, wood and wood products.[73] In principle the DCFTA offers major opportunities for Ukrainian businesses, especially for food producers and manufacturers of machinery. However, the practicalities of gaining access to the EU single market pose significant challenges.[74]

The EU promoted the DCFTA on the premise that it would deliver economic benefits to Ukraine over the medium to long term, as institutional reforms and regulatory convergence are achieved. However, the 2014–15 economic crisis and Russia's punitive measures changed the context and shortened time horizons. Access to the EU market has taken on more urgency following Russia's halt on trade with Ukraine in retaliation for the DCFTA.

This underlines the fact that the shift in Ukraine's trade orientation is partly a reflection of circumstance as well as design. The DCFTA was never intended to exclude one

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[71] Interviews with EU and Ukrainian experts, Kyiv, February 2017. There are many lessons and instruments from Romania, Bulgaria and the western Balkans, which could inform the EU's support for promoting the rule of law in Ukraine, but they do not seem to inform the EU's strategies in Ukraine. See Popova, M. (2017), 'How Can the EU Help Ukraine Build the Rule of Law and Fight Corruption? Romania and Bulgaria as guideposts', *PONARS Eurasia Policy Memo* No. 469.
[72] Panchenko, I. and Sydorenko, S. (2017), '600mln instead of reforms: EU's assistance to Ukraine that may become harmful', *Ukrainska Pravda*, 14 March 2017, http://www.eurointegration.com.ua/articles/2017/03/14/7062948/view_print/.
[73] Ukraine's exports to the EU grew by 24.5 per cent in the first quarter of 2017 in comparison to the same period in 2016, according to the MEDT. See https://twitter.com/mineconomdev/.
[74] Adarov, A. and Havlik, P. (2016), *Benefits and Costs of DCFTA: Evaluation of the Impact on Georgia, Moldova and Ukraine*, Vienna: The Vienna Institute for International Economic Studies.

market in preference for another, and is compatible with Ukraine's numerous other FTAs, including those with Russia and other Commonwealth of Independent States (CIS) countries. Indeed the Ukrainian government actively sought to prevent further trade restrictions by Moscow, through trilateral EU–Ukraine–Russia negotiations on the DCFTA conducted in 2014–15.

For the first time since independence, Ukraine was ready to sever the 'umbilical cord', leading to a drastic reduction in its economic and energy connectivity with Russia

However, these negotiations were unsuccessful. They merely exposed the lack of substance in Russia's claims about the potential adverse effects on its economy of increased EU–Ukraine trade. The negotiations also exposed a lack of interest on Russia's part in finding technical solutions to trade-related issues.[75] Although Moscow had started blocking some Ukrainian exports as early as the summer of 2013, access to the Russian market became increasingly restricted following the Euromaidan and the signing of the DCFTA. This culminated in Russia's unilateral exclusion of Ukraine, with effect from 1 January 2016, from the multilateral 2011 CIS FTA (which Ukraine had joined in 2012). The move was consistent with Moscow's well-established pattern of using trade and energy dependency to force political concessions.

For the first time since independence, however, Ukraine was ready to sever the 'umbilical cord', leading to a drastic reduction in its economic and energy connectivity with Russia. As of 2017, according to one EU expert in Kyiv, 'nobody now thinks that access to the Russian market is possible'.

Trade with Russia declined from 25.7 per cent of Ukraine's total trade in 2012 to 11.6 per cent in 2016.[76] This change is an immediate blow to the economy but may force structural flaws to be addressed more quickly. Overdependence until recently on Russia as an export market and energy supplier has had a distorting long-term effect on the Ukrainian economy, for example, by discouraging energy efficiency. It has lowered the competitiveness of Ukrainian companies: 'What was sufficient for the Russian market is not enough for the EU,' notes an EU official in Ukraine.[77]

The adjustment has been complicated, however, by domestic economic crisis, military conflict in the eastern part of the Donbas region and inconsistent EU support. Initially, in response to the difficulties in Ukraine, the EU offered a special package of Autonomous Trade Preferences (ATP) which temporarily provided access to the single market on an asymmetrical basis during 2014–15. This separate instrument was not part of the DCFTA and thus required the support of EU member states and the European Parliament. In 2016, the European Commission proposed some new and very modest temporary Autonomous Trade Measures (ATM) for Ukraine, which were finally adopted in 2017 and have a duration of three years. However, this initiative was largely symbolic and was intended mainly to indicate political support rather than boost Ukraine's exports to the EU.[78]

[75] Wolczuk, K. and Dragneva-Lewers, R. (2015), 'No Economic Bright Spot in Tensions Between the EU, Ukraine and Russia', Chatham House Expert Comment, 17 December 2015, https://www.chathamhouse.org/expert/comment/no-economic-bright-spot-tensions-between-eu-ukraine-and-russia; Wolczuk, K. and Dragneva-Lewers, R. (2014), 'EU pragmatism has rewarded Russia's brazen trade bullying', The Conversation, 25 September 2014, http://theconversation.com/eu-pragmatism-has-rewarded-russias-brazen-trade-bullying-32050.
[76] European Commission (2017), 'European Union, Trade in goods with Ukraine', p. 8, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113459.pdf.
[77] Interview with an EU official, Kyiv, February 2017.
[78] The ATM mainly apply to agricultural products of lesser importance to Ukraine or provide only modest increases in tariff-free quotas for Ukraine's key agricultural commodities, such as grain. The fact that even these very modest trade concessions encountered resistance within the European Parliament indicates the limited support for integration from the very institution that had championed closer EU–Ukraine economic links. See European Parliament (2017), 'MEPs back further trade concessions to Ukraine, with exceptions', press release, 1 June 2017, http://www.europarl.europa.eu/news/en/press-room/20170529IPR76233/meps-back-further-trade-concessions-to-ukraine-with-exceptions.

Ukrainian business and access to the single market

The challenges of making the DCFTA work stem from Ukraine's reluctance to implement the reforms stipulated; and more broadly from the inhibiting effects of an oligarchic, monopolistic and predatory business culture, which hampers competition and makes it harder for small and medium-sized enterprises (SMEs) to grow. The 2014–15 economic downturn exacerbated these challenges, forcing many businesses to focus on crisis management rather than revenue growth, investment and expansion.

Demographic and cultural factors have played a role. Whether at large state-owned firms or smaller private companies, the success of efforts to diversify export markets has tended to reflect generational differences between younger and older entrepreneurs and managers. Businesses with younger owners are more dynamic and adjust more quickly. Those set up by the older generation are typically more oriented towards Russian/CIS markets. They have tended to view trade as a state-led activity, and to place a premium on cordial political relations with Russia as a means of ensuring market access for Ukrainian producers. As trade relations with the EU have come to the fore, these more traditionally minded business people have anticipated – incorrectly – that high-level political support would similarly facilitate swift access to the EU single market.

In order for the DCFTA to be effective, Ukrainian businesses need to do more than leverage political connections. They must adapt to a more competitive environment

In order for the DCFTA to be effective, Ukrainian businesses need to do more than leverage political connections. They must adapt to a more competitive environment. The commercial expertise, international networks and access to finance needed for this are in very limited supply. Foreign direct investment in Ukraine remains negligible. Among the older businesses, there is an aversion to diversification. Ukrainian companies are afraid of European competition, and thus lobby for protectionist measures. Oligarchic businesses resist moving from a rent-seeking model to a profit-based one. At the same time, while championing protectionism, they remain able to some extent to take advantage of the DCFTA by adopting EU standards on an ad hoc, self-regulated basis. As a result, there is an incentive for business actors with strong representation in the Ukrainian government and parliament to oppose the creation of a level playing field for rival domestic producers and European business.

The DCFTA requires Ukraine to open its borders to EU goods and services progressively, with transition periods of up to 10 years in most sectors. As of 2017, the Ukrainian government is preparing to promote trade reorientation and boost the competitiveness of domestic businesses, but progress has been limited.[79] While there have been some success stories, such as increased poultry sales in the European market, Ukraine's exports to the EU have increased largely because of higher shipment volumes of mainstay products such as sunflower oil. Even though exports to the EU have increased as a share of Ukraine's total exports, their composition has not changed significantly.

Trade promotion strategies continue to vary from one sector to another. Ukrainian producers of high-value-added goods such as machinery have been trying to diversify into other markets, such as the Arab countries. But Ukraine has yet to penetrate international value chains to a meaningful degree. Its agricultural sector has massive poten-

[79] The government has a new export strategy. See Ministry of Economic Development and Trade of Ukraine (2017), 'Eksportna strategia Ukraini: Dorozhna karta strategichnogo rozvitku torgivli 2017–2021' [Ukraine's Export Strategy: Roadmap for strategic trade development, 2017–2021], 28 March 2017, http://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=e6ab10fa-0ad9-4fe4-b8be-32f570693b64&title=EksportnaStrategiiaUkraini-DorozhniaKartaStrategichnogoRozvitkuTorgivli2017-2021.

tial, but the costs of compliance with EU standards are high. Although the DCFTA imposes quotas on trade in only 36 items, these caps apply to agricultural products in which Ukraine enjoys a competitive advantage, such as grain and honey. The issue of quotas has attracted considerable media attention in Ukraine.[80]

So far, large businesses have found it easier than smaller ones to take advantage of the DCFTA. Large agricultural companies more readily qualify for tariff-free quotas – offered on a first-come-first-served basis – while SMEs lack the expertise and resources to apply for such facilities. To overcome this and similar impairments, the European Investment Bank (EIB) launched a project with EU funds to support SMEs via a variety of measures, such as loan guarantees, and through channels such as the governmental deregulation office in Kyiv and business advice centres in the regions.[81] But out of 15 planned centres, only four were open as of mid-2017. There is still insufficient support to help SMEs cope with competitive pressures once the DCFTA's transition periods are over. This remains a major weakness in the EU's strategy, and an area in which institutional support to Ukraine differs from that offered to accession countries.

The economic crisis and partial closure of the Russian market to Ukrainian exports have raised the stakes, and have made businesses impatient for progress on the DCFTA. However, prospects are limited by the fact that the DCFTA was never intended to offer 'quick fix' solutions. It was designed as a process of gradual economic integration, involving incremental trade intensification and regulatory convergence. To improve the outlook for bilateral trade in the current context, it is therefore of pivotal importance that the EU and Ukraine move swiftly to identify and sequence the necessary phases in DCFTA implementation, in order to facilitate trade reorientation in the most efficient and cost-effective way.

Conclusions

The Euromaidan protests in 2013–14 and the conclusion of the Association Agreement appeared to be game-changers in EU–Ukraine relations. Popular demand for life in a 'normal European state' was clearly demonstrated during the protests, and has continued to be in evidence since then. Given this context, the progress of AA-DCFTA implementation will provide an essential point of reference for institutional and economic reforms.

Milestones so far include the signature and ratification of the overall Association Agreement, the launch of the DCFTA and the introduction of a visa-free regime for Ukrainians travelling to the EU. More broadly, the Ukrainian debate on Europe has shifted from history, geography and geopolitics to European values, rules and technical standards.[82] This represents a sea change in EU–Ukraine relations, and has resulted in an incomparably better understanding among Ukrainian policymakers of the preconditions for integration with the EU.

However, as this chapter has discussed, Ukraine's elites still have a propensity for 'declarative Europeanization', in which pro-European rhetoric fails to translate into policy changes. For many politicians and their associates, reform remains optional.

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[80] For example, the annual quota for honey was exhausted within the first two weeks of 2017; exports exceeding the quota are subject to a 9 per cent tariff. With the ATM, adopted in 2017, the increase in tariff-free quotas for honey is only modest.
[81] See the project website, http://www.eu4business.eu/ukraine.
[82] Wolczuk, K. (2016), 'Ukraine and Europe: Re-Shuffling the Boundaries of Order', *Thesis Eleven*, 136(1), pp. 54–73, doi: 10.1177/0725513616667666.

After two decades of mismanagement, the scale of reforms required and the domestic barriers to enacting them are formidable. Meanwhile, the necessary political will, capacity and resources remain in short supply.

To compound these problems, signs of 'Ukraine fatigue' have started creeping into EU institutions and policy circles since 2016. This is perhaps inevitable in light of the unrealistic expectations that had previously prevailed in the EU. Rebuilding the Ukrainian state requires a long-term vision and commitment. 'Institutional impatience' is a well-known flaw of international assistance: donors generally lack the patience (or long-term budgets) to sustain institution-building, even though such a project requires visible, predictable and continuous support over many years.[83]

The AA-DCFTA has transformational potential, but implementation needs to factor in the political, economic and geopolitical context. Success depends not only on technical rule diffusion and capacity-building, but also on political engagement by the EU to cement Ukraine's 'European vocation'. Networks of patronage and rents remain powerful. In addition to providing technical assistance, therefore, EU institutions and officials need to step outside their comfort zones and empower reformist forces in the country, while exposing the anti-reformers. Only then will societal demand that Ukraine become a 'fully European country' have a chance of being realized.

[83] Birdsall, N. (2005), 'Seven Deadly Sins: Reflection on Donor Failings', Centre for Global Development Working Paper, No. 50.

4. Economic Reforms

Timothy Ash

The problem in gauging Ukraine's progress in economic reform is that its performance is all too frequently judged against unrealistic expectations – and by commentators who have an interest in promoting, or a bias towards, a particular narrative. At home, the euphoria generated by the success of the Euromaidan protests, and the fact that hundreds of thousands of people demonstrated – and many died – in support of political reform and closer economic relations with the EU, perhaps led many to hope for a rapid transformation in the economy following the ousting of President Viktor Yanukovych in February 2014.

However, reform was always likely to proceed more slowly and be more difficult in practice. Limiting factors included 20-odd years of largely failed economic development since Ukraine's independence, the legacy of Soviet rule and central planning, and the impact of Russia's annexation of Crimea in 2014 and of the conflict in the east of the country.

Performance is all too frequently judged against unrealistic expectations

In Western policy circles, years of Ukraine failing to modernize its economy had fuelled the lazy and sometimes self-interested narrative that the country was somehow beyond reform. For some Western countries, perhaps half-hearted in providing financial or political support, and even eager to push Ukraine back into the Russian orbit, this was a useful fiction. Further east, the regime of Vladimir Putin, Russia's president, had a clear interest in the failure of a Western development model in Ukraine – Moscow was thus similarly interested in promoting the line that the Euromaidan reforms were doomed to failure.

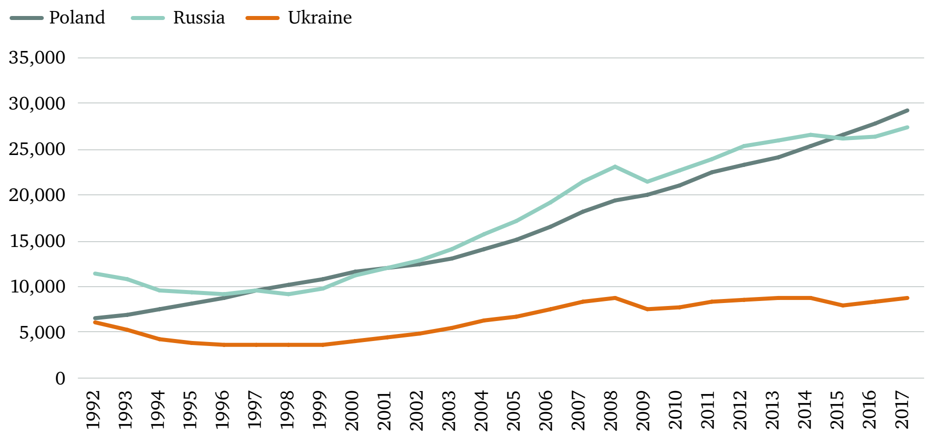
As is very often the case, the reality has proven more complicated than either the overoptimistic or unduly pessimistic views of Ukraine's prospects. Since the change of government in 2014, Ukraine has produced – against the odds – some remarkable achievements in terms of economic reform and stabilization. However, the job is incomplete, and more can and certainly needs to be done.

As a starting point, it is useful to put to rest a commonly held misconception that the Ukrainian economy was somehow doing well prior to the Euromaidan protests, and that it would have done much better to simply maintain its existing course of development as a so-called 'bridge between East and West'. This fallacy can be challenged by comparing the respective changes in per capita GDP at purchasing-power parity (PPP) for Russia, Poland and Ukraine since the early 1990s, when their transitions from planned economies towards market-oriented models were just beginning. According to IMF data,[84] in 1992 both Poland and Ukraine had per capita GDP of just over $6,000 in PPP terms, while the comparable figure for Russia was $11,500 or thereabouts.

Looking at their respective development models, Poland from 1989 chose Western liberal market democracy, formalized in the Treaty of Copenhagen in 1993 and anchored a decade later by EU accession. Russia, by contrast, chose a more statist orientation (a 'power vertical') that was assisted by the commodity super-cycle. Despite these different paths, incomes in both economies increased dramatically in the ensuing two decades: by 2013 Poland's GDP per capita GDP had increased fourfold to $24,000 in PPP terms, while Russia's had more than doubled to $26,000. In stark contrast, Ukraine achieved per capita GDP of only $8,676 at PPP in the same year (see Figure 1).[85]

[84] IMF (2017), World Economic Outlook Database, April 2017, http://www.imf.org/external/pubs/ft/weo/2017/01/weodata/weorept.aspx?sy=1992&ey=2013&scsm=1&ssd=1&sort=country&ds=.&br=1&pr1.x=69&pr1.y=7&c=964%2C922%2C926&s=PPPPC&grp=0&a= (accessed 9 Aug. 2017).
[85] Ibid.

Figure 1: Per capita GDP at purchasing-power parity, US$



Source: IMF (2017), World Economic Outlook Database, April 2017, http://www.imf.org/external/pubs/ft/weo/2017/01/weodata/weorept.aspx?sy=1992&ey=2017&scsm=1&ssd=1&sort=country&ds=.&br=1&pr1.x=69&pr1.y=7&c=964%2C922%2C926&s=PPPPC&grp=0&a=.

Any casual observer of these statistics would quickly come to the conclusion that the Polish and Russian development models (for all their faults) were superior, and that the status quo in Ukraine was not working for the bulk of the population. By 2013, it was simply unsustainable. The Euromaidan movement was arguably a popular revolt against more than 20 years of failed economic development, and against long-running exploitation of the population by the country's elites. Something snapped, or rather the prospect of Ukraine signing its Association Agreement and Deep and Comprehensive Free Trade Agreement with the EU inspired hope of a different, better and more inclusive model of development.

Dependency on cheap Russian oil and gas promoted rent-seeking and caused economic distortions

So to properly understand what has been achieved, or not, in terms of economic reform, perspective has to be given to the starting point in 2013, even before the Euromaidan. Ukraine's level of development was far below that of its regional peers, and among the lowest in Europe. More importantly, the country followed a totally distorted economic model which was corrupt at its very heart, arguably institutionally so. This situation was arguably sustained by outside agents for whom Ukraine's structural economic flaws were advantageous. Dependency on cheap oil and gas from Russia promoted rent-seeking, and caused economic distortions and inefficiencies that affected not only the energy sector, but also the financial system, the fiscal accounts and the balance of payments. These same distortions were exploited by Ukraine's own elites.

And to further understand the challenges facing Ukraine, it is important to add the headwinds to the economy felt over the past three-and-a-half years since Yanukovych's departure. A deep recession has ensued, with a peak-to-trough decline in real GDP of around 17 per cent. In US dollar terms, nominal GDP has dropped by almost half to just $93 billion, with per capita GDP at market exchange rates (as opposed to PPP) down to around $2,200 in 2016,[86] the lowest in Europe. High inflation and a weakened currency have compounded the situation, their effects particularly evident in

[86] Ibid., http://www.imf.org/external/pubs/ft/weo/2017/01/weodata/weorept.aspx?sy=2013&ey=2016&scsm=1&ssd=1&sort=country&ds=.&br=1&pr1.x=51&pr1.y=13&c=926&s=NGDPD%2CNGDPDPC&grp=0&a=.

the initial aftermath of the Euromaidan. In early 2015, the rate of consumer price inflation spiked to close to 60 per cent, while in the year to March 2015 the hryvnia lost two-thirds of its value. The government, meanwhile, was forced into default on its private-sector Eurobond liabilities, resulting in a debt restructuring in November 2015.

It should not be forgotten that Ukraine's recent economic decline was not all the result of its own systemic failings. A range of external forces also buffeted the economy. These included Russia's annexation of Crimea, Russian military intervention and the conflict in Donbas. They also included a trade war with Russia and a marked drop in demand and prices for key Ukrainian exports, particularly metals, around this same time (2014–15). These forces added to the difficulties for Ukraine's economic reform team. Indeed, set against a weak starting point and the considerable subsequent shocks to the Ukrainian economy after the Euromaidan revolution, it is remarkable what has been achieved to date.

Macroeconomic policy and stabilization

Since the worst of the economic crisis in 2014–15, the outlook has brightened. A combination of a flexible exchange rate policy, tight fiscal and monetary policy, and energy sector reform/adjustment, among other actions, reinforced by two IMF support programmes, has brought a remarkable stabilization in the macroeconomy – perhaps the first proof of the success of the policy adjustment.

Macroeconomic stabilization has now set the stage for growth and recovery

Economic growth resumed, admittedly from a low base, in 2016, with preliminary data suggesting a respectable 2.3 per cent rise in real GDP.[87] Prior to the blockade by Ukrainian war veterans of the separatist-controlled Donetsk People's Republic (DPR) and Luhansk People's Republic (LPR) in early 2017, full-year growth in 2017 had looked set to accelerate further, to perhaps 2.5–3 per cent at least. Inflation has dropped to around 15 per cent year on year, and the currency has strengthened to around UAH 25:$1. The current account went from a deficit of 9.2 per cent of GDP in 2013 to close to balance in 2015, admittedly helped by a recession-induced downturn in domestic demand; it has since moved back into a more modest deficit, equivalent to 3.6 per cent of GDP in 2016, as the resumption of real GDP growth has boosted imports.[88] Ukraine's weak fiscal position has also improved (see 'Reform of public finances', below).

Importantly, macro-stabilization has now set the stage for growth and recovery, with the pace of the latter dependent on the successful implementation of a range of micro-level policies to improve the business environment and encourage locals and foreigners to invest.

In terms of the specific reforms rolled out since the Euromaidan revolution, the following stand out as highlights:

[87] Ibid., http://www.imf.org/external/pubs/ft/weo/2017/01/weodata/weorept.aspx?pr.x=59&pr.y=11&sy=2012&ey=2017&scsm=1&ssd=1&sort=country&ds=.&br=1&c=926&s=NGDP_RPCH&grp=0&a=.
[88] Ibid., http://www.imf.org/external/pubs/ft/weo/2017/01/weodata/weorept.aspx?sy=2013&ey=2016&scsm=1&ssd=1&sort=country&ds=.&br=1&pr1.x=65&pr1.y=7&c=926&s=BCA_NGDPD&grp=0&a=.

Monetary and exchange rate policy

The National Bank of Ukraine (NBU) moved to a more flexible exchange rate arrangement in 2015. This allowed the hryvnia to weaken significantly in nominal and real terms, which in turn supported the broader macroeconomic adjustment. The move was partly driven by the paucity of the NBU's foreign exchange reserves, which had dropped to a low of under $5 billion in the first quarter of 2015, but there was also strong ideological support within the NBU to let markets work. Recognizing the need for financial stability, the NBU maintained certain restrictions on current- and capital-account transactions – tightening export surrender requirements and restricting the transfer of dividends out of the country. Subsequently, as the hryvnia has stabilized, and with foreign exchange reserves bolstered beyond the level of three months' import cover typically deemed critical, the NBU has moved to relax these requirements.

The changes at the NBU are now hailed as a model for wider public-sector administrative reform

The central bank seems committed to a floating exchange rate, which was a requirement for the de facto introduction of an inflation-targeting regime in early 2016. In setting the stage for this reform, the NBU has substantially reformed its internal structures, streamlining and winding down non-core functions. It has focused resources on the traditional functions of an inflation-targeting central bank, while remaining cognizant of its role in regulation and supervision of the banking sector. The research function and markets departments at the NBU have been strengthened beyond recognition, even as overall reforms have reduced the bank's staff from nearly 12,000 to around 5,000, with headcount likely to fall further still. The changes at the NBU are now being hailed as a model for wider public-sector administrative reform.

Banking sector reform

The NBU has been instrumental in transforming the Ukrainian banking sector over the past three years. In 2014 the country had too many banks (more than 180), many of which were close to bankruptcy and suffered from a range of problems that included: high non-performing loan (NPL) ratios;[89] rapidly eroding capital bases; large, open foreign exchange positions; deposit flight; and a prevalence of connected-party lending and money-laundering. It is fair to say that the sector was on the brink of collapse, was a clear and present threat to macroeconomic and financial stability, and imposed a large contingent liability on the state.

The NBU has responded with an impressive restructuring programme. Supervision and regulation have been stepped up dramatically. The NBU has rolled out extensive stress-testing and asset quality reviews of banks, with asset and capital deficiencies identified and resolution plans agreed. Nearly 90 banks have been closed. These have included a number (around 20) deemed to have been engaged in money-laundering, and others with failed/failing business models and owners unwilling or unable to impart change and recapitalize operations. Connected-party lending has been reined in. Some high-profile and politically sensitive cases have proceeded, most notably the nationalization of PrivatBank, the country's largest bank. The existing two main state-owned banks (Ukreximbank and Oschadnyi Bank) have undergone extensive internal restructuring, with management and boards changed or revamped. They have also benefited from substantial recapitalization by the state.

[89] NPL ratios were as high as 50 per cent of assets, if a broad interpretation that includes substandard loans is used. Source: author's interviews with banking sector managers.

It is testimony to the skill and tenacity of officials at the NBU, and also at the Deposit Insurance Fund, that these revolutionary changes have been effected without causing broader systemic problems. The nationalization of PrivatBank went ahead without prompting the run on system deposits that some had feared. Extensive preparation seems to have been a major factor in the operation's success – the preliminary work started two years in advance, supported by international financial institutions that included the IMF.

Reform of public finances

Successive post-Euromaidan governments have undertaken far-reaching fiscal consolidation, cutting spending and raising revenues. Helped to a certain degree by an inflation tax, the fiscal deficit fell from 10 per cent of GDP in 2014 to just 2.2 per cent of GDP in 2015, before rising fractionally to 2.3 per cent of GDP in 2016. By the first half of 2017, the fiscal position was in surplus. Central to this adjustment was the eradication of the deficit at Naftogaz, the state-owned gas supply and transit company. The fiscal position specific to Naftogaz went from a deficit of 5.5 per cent of GDP in 2014 to balance in 2016 (see 'Energy sector reform', below).[90] Moreover, the 2016 budget introduced extensive policy reforms to simplify the tax system and reduce informality throughout the economy. It sought to widen the tax base, improve tax compliance and boost revenues. The main elements of the reform programme were as follows:

- Sixty-seven different rates of social security contribution, with an effective rate of 41 per cent, were cut to a single rate of 22 per cent payable entirely by the employer.
- A dual system consisting of personal income tax rates of 15 per cent and 20 per cent was replaced by a single rate of 18 per cent.
- Marginal tax rates for small and medium-sized enterprises (SMEs) were simplified and raised.
- A general move from direct to indirect taxation occurred, aimed at boosting entrepreneurial and economic activity. As part of this process, the agricultural sector – long a tax/refund black hole – was levied with a single 20 per cent rate of value-added tax (VAT).
- Taxes on property and excises were raised, while royalties on energy extraction were cut.

The 2016 budget introduced extensive policy reforms to simplify the tax system and reduce informality throughout the economy

As yet, the benefits of these reforms have yet to accrue in terms of revenue. Much of the fiscal adjustment noted above came from budget cuts, with spending as a share of GDP falling from 44.8 per cent in 2014 to 40.6 per cent in 2016. Revenue itself dropped from 40.3 per cent of GDP to 38.4 per cent of GDP over the same period.[91]

A key reform rolled out in 2016 was the introduction of the ProZorro public procurement system (see Chapter 6, in particular). There are hopes that this system will significantly improve transparency and efficiency in public procurement, while reducing scope for graft. Annual system budget savings of as much as $2 billion, equivalent to around 2.5 per cent of GDP, are anticipated.

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[90] IMF (2017), 'Ukraine : 2016 Article IV Consultation and third review under the Extended Arrangement'.
[91] IMF (2017), World Economic Outlook Database, April 2017, http://www.imf.org/external/pubs/ft/weo/2017/01/weodata/weorept.aspx?sy=2014&ey=2016&scsm=1&ssd=1&sort=country&ds=.&br=1&pr1.x=63&pr1.y=4&c=926&s=GGR_NGDP%2CGGX_NGDP&grp=0&a=.

Further savings have been achieved as a result of the Ministry of Finance (MOF)'s debt restructuring of $15 billion in sovereign and sovereign-guaranteed Eurobond liabilities in 2015. The landmark deal, which included a 20 per cent principal haircut and a three-year maturity extension, reduces Ukraine's obligations by around $12.5 billion over the three-year period of the IMF Extended Fund Facility (EFF). While the operation was criticized for its generosity to bondholders (particularly its provision of GDP warrants with large potential long-term payouts), it bought time for the government to refocus on critical policy challenges and prioritize other reforms, free of concerns over the near-term debt-servicing burden.

Energy sector reform

Energy reforms have transformed Ukraine's fiscal and balance-of-payments positions, and have created opportunities for the sector to become a dynamic driver of economic growth. As noted above, the Naftogaz contribution to the quasi-fiscal deficit has been cut, and the company is now running a profit. The gas import bill, meanwhile, has been cut from $12 billion in 2009, when gas imports ran at around 40 billion cubic metres (m^3), to around $2 billion at present, with gas imports below 10 billion m^3. Importantly, zero imports are planned from Russia in 2017.

Energy sector reforms have transformed Ukraine's fiscal and balance-of-payments positions

The reform strategy has been orthodox. Domestic gas prices have been raised to cost recovery levels – implying price increases of 200–300 per cent in some cases – with price hikes accompanied by targeted financial assistance to around 5.5 million households disadvantaged by the rise in their fuel bills. The cost of subsidies paid to households has increased, from 1 per cent of GDP in 2015 to 1.75 per cent of GDP in 2016. This has cushioned the blow of the adjustment, while encouraging energy conservation and diversification. To put this into perspective, over the past decade annual gas consumption in Ukraine has been cut by around half to under 35 billion m^3. With further reforms, consumption is likely to be cut even further, to the point that in the medium term it may be possible for Ukraine to become self-sufficient in gas or even a net gas exporter.

A new gas market law is intended to underpin the unbundling of Naftogaz and the national gas market, allowing third-party access to gas transmission facilities. Meanwhile, the management and supervision of Naftogaz have been overhauled, with assistance from international financial institutions. That said, the introduction of a new Naftogaz statute, which would reinforce improvements in corporate governance, is being resisted by vested interests, as is the unbundling process.

Further reforms in the energy sector will need to focus on several issues: executing the unbundling of the gas and electricity sectors; targeting social assistance more effectively (as the current system is arguably too generous to better-off families); improving the efficiency of district heating companies; addressing non-payment problems; and, more generally, improving efficiency across the network. On the latter point, despite progress over the past two to three years, there remains considerable room to reduce energy consumption through efficiency gains.

The success of the recent reforms is significant. It is worth stressing that for much of the period since independence, excuses for non-reform of the gas-pricing formula have abounded. Foot-dragging in this area likely reflected the fact that the rents extracted by Ukraine's elites from this source were substantial – in the region of $2–3 billion a year. Yet despite resistance from vested interests and some economic hardship in the general population, the reforms have been rolled out without causing a social revolution.

New reform priorities

The successful reforms identified above are primarily macroeconomic, providing a top-down impact on the environment in which business operates. While the resultant stability sets the stage for stronger economic growth in broad terms, the quality and precise pace of growth will now arguably be determined by micro-level reforms. These include measures to improve the underlying business environment, particularly by reducing bureaucracy, corruption and excessive regulation. On this latter score progress has been much more chequered. Some of the important reform priorities are as follows:

Pension reform

There is a pressing need to reform the antiquated pension system, which is simply not fit for purpose and remains a huge drag on the public finances. The current system provides entitlement to too many individuals. It imposes a financial burden both directly on the government and indirectly on businesses, which ultimately must fund the system through taxes and social security contributions. The pension system costs the equivalent of around 11–12 per cent of GDP, compared with a European average of 8–9 per cent of GDP. It runs a deficit equivalent to around 6 per cent of GDP, largely funded by direct transfers from the state budget.[92] Not only is the retirement age too low, but special preferences in particular professions (the police, army, civil service) weigh the system down. Social security contributions have fallen, and widespread avoidance of payment by employers further inhibits revenues.

There is a pressing need to reform the antiquated pension system

The obvious solution is 'parametric reform' – that is, adjusting parameters such as contribution rates, the retirement age and so on – but populists within the Verkhovna Rada bitterly oppose this. Policymakers have suggested that hikes in the retirement age can be avoided by lowering the dependency ratio – at present, the ratio of pensioners to contributors stands at a remarkably low 1:1, but it is expected to rise to 1.3:1 (beneficiary to contributor) by 2040 as the population ages.

In addition to parametric adjustments, the most likely reforms entail increasing the pool of contributors by reducing informality in the economy. Change seems inevitable at some point, as the present system costs too much to run yet fails to provide a living pension (average pensions are the equivalent of just $2 per day). At the time of writing, there were hopes that the Rada would approve an IMF-compliant pension bill in the autumn of 2017.

Fighting corruption

Opinion polls consistently suggest that corruption remains one of the biggest problems for domestic and foreign businesses, and for Ukrainian society more widely. Successive governments have paid lip service to fighting corruption, with support from international organizations. Anti-corruption efforts have been the cornerstone of IMF, World Bank and EU/European Bank for Reconstruction and Development support programmes. Some institutional reforms have been rolled out (see chapters 6 and 7 in particular). They include the ProZorro public procurement system; an 'e-declaration' system, launched in September 2016, for recording the assets of Verkhovna Rada deputies, ministers and government officials; and the establishment

[92] IMF (2017), 'Ukraine : 2016 Article IV Consultation and third review under the Extended Arrangement'.

of the National Anti-Corruption Bureau of Ukraine (NABU). The NABU has been operational since January 2016. Plans are afoot to create special anti-corruption courts and appoint anti-corruption judges – something the IMF is currently pressing the government to deliver on as part of the fourth review under the IMF EFF.

Despite all this activity, there has been little real progress in the investigation, prosecution and conviction of individuals over corruption. While the asset e-declaration system was hailed as a landmark for Ukraine, and indeed globally in the fight against corruption, few of the seeming irregularities uncovered in the initial set of declarations have been formally addressed. If the system is perceived as failing to investigate, prosecute and convict politicians and public officials for wrongdoing, the risk is of a popular backlash against reform, which could itself bring populist, less reform-minded individuals to power and affect overall prospects for economic/policy transformation.

The abolition of the tax police was also a major achievement

Dovetailing with the anti-corruption agenda is the urgent need to overhaul the State Fiscal Service (SFS), which encompasses the tax and customs administrations. The recent annual report of the business ombudsman showed the SFS to be the most complained-about government institution, accounting for 45 per cent of all complaints. The SFS has now been put under the control of the MOF rather than the Cabinet of Ministers. This should give the minister of finance more scope and responsibility to reform the service; hitherto, the SFS had operated in a murky no man's land between the MOF and the prime minister's office. A structural benchmark for the fourth review under the current IMF programme is the merger of the tax and customs administrations. If implemented, this should further boost efficiency and MOF oversight, and reduce the scope for graft. The roll-out of electronic systems throughout the SFS should result in a more rules-based system in which the use of arbitrary discretion by revenue officials becomes less prevalent.

Already some success has been achieved with the electronic administration of VAT returns. The abolition of the tax police with effect from January 2017 was also a major achievement, as corrupt officials in the organization had operated with impunity for years – indeed, doubts remain as to whether the tax police was ultimately revenue-enhancing or revenue-subtracting, given the prevalence and likely scale of embezzlement. Corruption remains hard to eradicate: following the tax police's demise, other security agencies have sought to fill the void in terms of rent-seeking. Nonetheless, the recent arrest of the head of the SFS, Roman Nasirov, raises some hope that the administration under President Petro Poroshenko is finally willing to act on allegations of corruption.

State-owned enterprise (SOE) reform

The 3,000 or so enterprises (accounting for around 10 per cent of GDP) at present remaining in state ownership represent a source of inefficiency in the economy, a continued drain on the public finances through their need for subsidies, and a source of corruption.

There is acceptance within policy circles that to solve the problems at many of these entities, it be will be necessary to improve their corporate governance and transparency, privatize them or put them into liquidation. Some effort has been made over the past few years to improve the management and supervision of entities such as Ukrainian Railways and Naftogaz. However, privatization has struggled – not helped by the weakness of supporting infrastructure and legislation, a difficult

macroeconomic environment, and the regional political and security setting. The hope had been that the Odesa Seaport privatization would prove to be a model for other SOEs to follow, but the sale ultimately failed, weighed down by legal controversy and challenges, and also perhaps by uncertainties over the broader business and investment environment. The future of the next big entity expected to go under the hammer, the power generator Centrenergo, is similarly clouded in uncertainty.

A recent announcement over a 'triage' solution to managing SOEs, including plans to privatize, liquidate or sell concessions in many firms while keeping only 15 strategic enterprises in state ownership, is encouraging.

Land reform

It remains ironic that in Ukraine, home to the rich black soils known as 'chernozem' and arguably the best agricultural land in Europe, land reform has been sadly lacking. The potential of the Ukrainian agricultural sector is huge. Grain yields are currently one-third or more below those in Western Europe, but could easily reach parity given the right use of inputs and the right upstream and downstream support systems. This could push annual grain production from 60–70 million tonnes towards 100 million tonnes. However, the key impediment remains the lack of a functioning market for land, necessary for significant economies of scale to be extracted.

The potential of the agricultural sector is huge

Arguments against reform suggest that Ukraine is somehow 'different', and that special factors are at work compared to countries where land markets allow farmers to use land as collateral for loans (thus enabling them to invest). There is also the argument that small landowners will be exploited by large capitalist farmers – but that already seems to be the case with the existing leasehold system. It seems more likely that vested interests (well represented in the Verkhovna Rada) behind large leasehold farming systems are preventing much-needed change. But land reform, if well-constructed, could be truly transformational for Ukraine, once again making it the 'breadbasket' of Europe and enabling the agricultural sector to become a powerhouse for the rest of the economy.

Conclusion

There is a sense that the four major areas of reform on the agenda – pension reform, delivery on the anti-corruption agenda, privatization and land reform – have now brought Ukraine to something of a turning point. Delivery on these reforms could improve the outlook for economic growth and mark out a bright future for the country. Indeed, with effective institutional changes, there is no reason why Ukraine cannot top the European growth stakes and enjoy a rise in GDP growth – admittedly from a low base – to an average of perhaps 5 per cent per annum. Inevitably, vested interests will try to stand in the way. But what we have learned from successful reforms so far in banking, the energy sector and the public finances is that Ukraine – far from being a lost cause – *is reformable*, if international financial institutions and civil society continue to press reluctant elites to deliver.

5. Governance, Democratization and Mass Media

Janet Gunn

For a state in which much of political life, governance and the judiciary has been captured by vested interests for the past 25 years, the tally of democratic reforms undertaken since the Euromaidan revolution is impressive. But these reforms are neither complete nor irreversible, and in 2017 there have been signs of substantial pushback from the Ukrainian establishment. Most observers continue to see grounds for optimism, but more needs to be done to secure the country's still-fragile political transformation.

The national tradition in Ukraine is stronger than the state tradition and has become even stronger in the period since 2014. But the major tasks Ukraine has to undertake require institution-building and state management, and much of the change requires high-level political coordination. The Freedom House 'Nations in Transit' rankings for 2017 describe Ukraine as a 'transitional government or hybrid regime', on a par with Georgia and Albania.[93] Ukraine's self-proclaimed status as a European country invites high expectations both among the domestic electorate and international partners for improved governance – not least, in relation to obligations under the EU Association Agreement. Significant progress has been made in legislative, public administration, decentralization and local government reforms. Some 320 reform-related laws were adopted in 2015 and a further 200 or so in 2016;[94] in comparison, legislative activity pre-2014 was among the lowest in the former Soviet region.

Yet formidable challenges remain. Ukraine's constitutional framework has been in flux since independence. The 1996 constitution provided for strong presidential authority, which was weakened in 2004, reinstated in 2010, and in 2014 weakened again when the 2004 amendments were restored. Constitutional reform has been hesitant, and there is no clear division of powers between the executive, the legislature (Verkhovna Rada) and the judiciary, all of which are subject to influence by politicians with business interests. Ukraine by no means has an authoritarian system, such as that which Viktor Yanukovych tried to establish during his presidency (2010–14). The current president, Petro Poroshenko, shares power both with the government and – since the ruling coalition's loss of its parliamentary majority in 2016 – with a variety of other political forces. Nonetheless, the presidency has considerable – and, many would argue, undue – influence over the political process; it is alleged, for example, that the new candidates nominated by the president for the Central Electoral Commission (CEC) in 2016 (but not accepted by the Rada) were affiliated with the governing parties, with no representation for opposition parties.

Corruption also remains rife. Measures to tackle it are discussed in detail elsewhere in this study (see Chapter 7, in particular). Crucial electoral reform is stalled, and there have been calls for early parliamentary elections (not due until 2019), but these would be unlikely to produce a fair result while the existing system is in place. Even if elections were entirely free and fair, this would not be sufficient to establish a fully functioning democracy. An expert on democratic transition concluded in early 2017 that substantive progress in Ukraine could take 'several electoral cycles'.[95] Despite significant progress, reform in most areas has required persistent pressure from the international community and civil society. In particular, conditionality and incentives from the EU and IMF, such as the lure of visa-free travel to Schengen countries, have been crucial. Opponents of reform have attempted to dilute crucial legislation

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[93] Freedom House (2017), *Nations in Transit 2017: Ukraine*, https://freedomhouse.org/report/nations-transit/2017/ukraine.
[94] Vox Ukraine (2017), '700 days of monitoring reforms', 17 February 2017, https://voxukraine.org/2017/02/17/700-days-of-monitoring-reforms-in-ukraine-ministries-rating/.
[95] Chatham House roundtable, 'Renewing the Political Class in Ukraine', February 2017.

concerning 'e-declarations' of the assets of public officials, as well as other areas. Meanwhile, the lack of clear procedural rules makes it easy to weaken legislation with amendments and counter-drafts.

Given this context, lack of popular faith in the political system is hardly surprising. In a recent opinion poll, 80 per cent of respondents indicated that they do not trust state officials, 77 per cent that they do not trust political parties, 74 per cent that they do not trust the government, and 67 per cent that they do not trust the president.[96] Likewise, Ukraine's pro-European civil society does not trust the political establishment to carry through fundamental reform. Using various mechanisms – such as the Reanimation Package of Reforms (RPR, a broad coalition of NGOs); CHESNO (an organization that pushes for transparency and fairness in elections); and direct civil society participation in government departments – civil society is involved in initiating and drafting legislation and monitoring progress. The RPR publishes timelines and checklists on reform legislation, showing which laws have been adopted and implemented and when.[97]

Parliament and political parties

Ukraine has a premier-presidential system, a form of semi-presidentialism in which the prime minister and cabinet are collectively responsible solely to the legislature. This often results in rivalry between the president and prime minister. Deputies to the Verkhovna Rada are elected through a mixed system, with half of the 450 seats filled by proportional representation and the other half in majoritarian (single-mandate) constituencies. Twenty-nine seats, representing Crimea and the occupied parts of Donetsk and Luhansk oblasts, are currently vacant. (There is little prospect at present of free and fair elections taking place in the occupied territories.) Political parties are still personality-driven rather than ideology-driven. The work of the Rada itself is only partly reformed, and informal ways of agreeing legislation and policies persist.

The October 2014 parliamentary election resulted in a wide-ranging realignment of political forces

The October 2014 parliamentary election resulted in a wide-ranging realignment of political forces. This realignment did little to reduce institutional resistance to systemic reform, however, and the power of vested interests remains entrenched. The eastern Ukrainian elite saw its parliamentary position dramatically diminished, as the Opposition Bloc (which inherited what was left of the Party of Regions, the power base of the Yanukovych regime) won only one-tenth the number of seats secured by the pro-Euromaidan parties. Of the previously existing parties, only the Fatherland Party (Batkivshchyna) led by Yulia Tymoshenko and the populist Oleh Lyashko's Radical Party were able to retain seats (the Radical Party gained 22 seats, having had just one in the 2012 parliament).

Other parties disappeared or reconstituted themselves as new ones (in order to circumvent the legal ban on electoral blocs or alliances) composed of members of previous parties: President Poroshenko's Bloc of Petro Poroshenko (BPP); the then

[96] Razumkov Center (2016), *Otsinka hromadyanamy sytuatsiyi v krayini, stavlennya do suspil'nykh instytutiv, elektoral'ni oriyentatsiyi* [Citizens' assessment of the situation in the country, attitudes towards social institutions, electoral orientation], 22 November 2016, http://razumkov.org.ua/ua/napryamki/sotsiolohichni-doslidzhennia/otsinka-hromadianamy-sytuatsii-v-kraini-stavlennia-do-suspilnykh-instytutiv-elektoralni-oriientatsii.
[97] Reanimation Package of Reforms (2017), 'Critical Tasks for 2017', 17 February 2017, http://rpr.org.ua/en/news/critical-tasks-for-2017/; Reanimation Package of Reforms (2016), 'The Biggest Achievements of the Ukrainian Reforms (as of November 2016)', 10 November 2016, http://rpr.org.ua/en/news/the-biggest-achievements-of-the-ukrainian-reforms/.

prime minister Arseniy Yatsenyuk's People's Front (which included several former leading members of the Fatherland Party); Lviv mayor Andriy Sadovyi's Samopomich (Self-Reliance) party; and the Opposition Bloc, which won 29 seats.

For the first time since the Soviet era, the Communist Party did not win enough votes to enter the Rada. Far-right groups did badly: Svoboda (Yanukovych's coalition partner in the pre-Euromaidan government) won only six seats, and Right Sector only one seat.

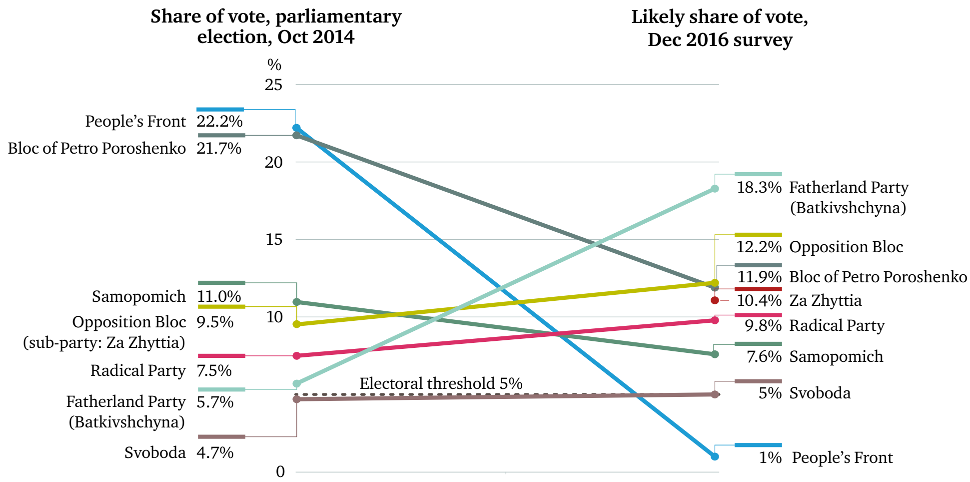
Overall, the composition of parliament changed substantially. More than 50 per cent of members of parliament (MPs) elected were new to the Rada, and its younger entrants included leaders of the Euromaidan movement, battlefield commanders, and investigative journalists pressing vigorously for reform.

The People's Front and the BPP won the largest number of seats (226). On 27 November 2014, they formed a pro-Western, reformist 'European Ukraine' coalition, controlling 288 seats jointly with Samopomich, the Radical Party and the rump of the Fatherland Party, with Yatsenyuk again as prime minister. The coalition lasted in this form until August 2015, when the Rada passed at first reading a constitutional amendment on administrative decentralization. However, the amendment failed to win the 300 votes necessary for full enactment of constitutional change, because it included provision for special status for the occupied parts of Donbas (as required by the Minsk II agreement). The populist Radical Party left the coalition over this issue.[98]

In early 2016 Yatsenyuk narrowly survived a vote of no confidence, after which the Fatherland Party also left the coalition, as did Samopomich, in the latter case over the slow pace of reform. As a result, the ruling coalition was left with only 215 votes in the Rada, 11 short of a majority. In April 2016 Yatsenyuk was replaced by Deputy Prime Minister Volodymyr Groysman, an associate of President Poroshenko and former mayor of Vinnytsia in western Ukraine. The coalition survived. Groysman has shown that he is his own man, rather than the president's, and he appears to have mended fences with the People's Front. However, voting records in the Rada show that many parties are divided, that about 40 MPs from the BPP and People's Front form an 'internal opposition'[99] within the coalition, and that opposition parties sometimes vote with the government. The popularity of the BPP and People's Front has plummeted, while the Fatherland Party seems to be on the rise once again (see Figure 2).[100]

[98] Morelli, V. L. (2017), *Ukraine: Current Issues and U.S. Policy*, Congressional Research Service, 3 January 2017, https://fas.org/sgp/crs/row/RL33460.pdf.
[99] Ostapchuk, D. (undated), 'Verkhovna Rada Ukrayiny pid mikroskopom' [Ukraine's Verkhovna Rada under the Microscope], Vox Ukraine, https://voxukraine.org/longreads/coalition/article-ru.html (accessed 20 Jul. 2017).
[100] Makarenko, O. (2017), 'Electing bad leaders in Ukraine: how to break the vicious cycle #UAreforms', *EuroMaidanpress*, 28 February 2017, http://euromaidanpress.com/2017/02/28/electoral-reform-not-early-elections-will-help-ukraine/.

Figure 2: Changes in popularity of political parties in 2014–16



Note: In a December 2016 survey of voting intentions, 53.1 per cent of respondents said they were undecided, would not vote or would spoil the ballot.
Source: Kyiv International Institute of Sociology (2016), 'Pres-relizy ta zvity, Elektoral'ni nastroyi naselennya shchodo vyboriv Verkhovnoyi Rady ta Prezydenta Ukrayiny, Hruden' 2016' [Press releases and reports: Voter preferences for parliamentary and presidential elections in Ukraine, December 2016], http://www.kiis.com.ua/?lang=ukr&cat=reports&id=667&page=1.

In a December 2016 survey of voting intentions, 53.1 per cent of respondents said they were undecided, would not vote or would spoil the ballot

The BPP's division goes back to November 2015, when 15 mainly new Verkhovna Rada members formed a sub-faction in the party under the banner of fighting corruption. In June 2016, its leaders, Svitlana Zalishchuk, Serhiy Leshchenko and Mustafa Nayyem, key members of the 23-strong 'Euro-Optimist' cross-party caucus in the Rada, joined the Democratic Alliance ('DemAlliance'), a hitherto insignificant party, to form a new party described as based on liberal values and pro-European orientation. They had been critical of Poroshenko's anti-corruption efforts since the Euromaidan revolution.[101] Some Samopomich MPs also joined DemAlliance. In July 2016, at its first congress, the reconstituted party adopted a platform of 'transforming Ukraine into a modern European country', with the hope of winning 12–15 per cent of the vote in the next parliamentary election (due in 2019). However, it is far from certain to get over the threshold of 5 per cent needed to enter the Rada, and its members accept they will likely need to form a new party with other like-minded politicians.

Other newcomers on the scene are Sila Ludey, another party with a strong anti-corruption agenda, and the Movement of New Forces set up by Mikheil Saakashvili, the former president of Georgia. In early November 2016, Saakashvili resigned as governor of Odesa, accusing the president of tolerating corruption. Saakashvili described his party as a new Ukrainian political force without links to big business or established political factions, and said he would push for early elections.[102] It is, however, essentially a populist movement rather than a genuine force for progress. In April 2017, the Movement of New Forces joined with Volya, which won one single-mandate seat in 2014. However, Saakashvili's political future in Ukraine is now in doubt, after President Poroshenko stripped him of his Ukrainian citizenship in July 2017.

[101] Minakov, M. and Webb, I. (2016), 'A new party for Ukraine's euro-optimists?', Open Democracy, 15 August 2016, https://www.opendemocracy.net/od-russia/minakov-webb-a-new-party-for-ukraine.
[102] Williams, M. and Chornokondratenko, M. (2016), 'Ukraine presidential official counters Saakashvili's corruption claims', Reuters, 17 November 2016, http://www.reuters.com/article/us-ukraine-crisis-corruption-saakashvili-idUSKBN13C1CH.

The Opposition Bloc is a vociferous critic of the government's pro-reform policies and fiercely opposes any moves to limit Russian influence in Ukraine

Opposition parties have also evolved. There have been reports of a split in the Opposition Bloc between the 'Donbas group' led by Rinat Akhmetov and the 'Energy group' led by Dmytro Firtash (an energy tycoon currently under house arrest in Austria). However, the Opposition Bloc is unlikely to split and is still well positioned to benefit from popular dissatisfaction. It is a vociferous critic of the government's pro-reform policies and fiercely opposes any moves to limit Russian influence in Ukraine. It is the only parliamentary force that openly refuses to recognize the Donbas conflict as Russian aggression against Ukraine. There is also a smaller group of parliamentarians controlled by Viktor Medvedchuk, a pro-Russian politician and confidant of Vladimir Putin. The concept of 'opposition' has itself become muddled, since the Opposition Bloc usually votes against anti-corruption legislation but supports the governing coalition on an ad hoc (opportunistic) basis, in so-called 'situational coalitions'.

In June 2015 a new party, the Association of Patriots of Ukraine (UKROP), was established, based on a group of non-party deputies in the Rada called the Patriotic Alliance. UKROP's support base is the industrial Dnipropetrovsk region, which became prominent in 2014–15 due to its proximity to the conflict zone and the tough line taken towards pro-Russian militants by its then governor,[103] Ihor Kolomoyskyi, a media owner often described as the only truly pro-Ukrainian business tycoon.[104] In the spring of 2017, after the government had responded to a spontaneous blockade of the occupied areas of Donbas by populist and nationalist forces by imposing its own official blockade, the largest nationalist and veterans' movements, Svoboda, Right Sector and National Corps, formed an alliance. This alliance may not last long. In addition, populist forces from Tymoshenko's Fatherland Party, which currently enjoys the highest popularity ratings, are pushing for early elections.

While many of the old practices in politics persist, attempts are under way to reform the parliamentary process; to improve MPs' links with their constituencies, local authorities and the media; and to build capacity in policy development, working practices and ethics. There has been a sharp reduction in the practice of MPs voting on behalf of absent members, and Rada attendance has improved. The number of women MPs has risen steadily, from 11 (2.4 per cent of the total) in 1991–94 to 47 (11 per cent of the current total, excluding vacant seats) in 2014. However, some of the October 2014 cohort of new MPs say they are not fully accepted or able to influence the Rada to promote reform – they still feel 'like guests'.[105] Low salaries and inertia are thought to be drawing some of the new MPs into the same sort of bad practices as those of the old guard.

A majority of the Ukrainian population favours the abolition of immunity from prosecution enjoyed by parliamentarians and members of the judiciary. In July 2016, in a rare case, 275 members of the Rada voted to remove the immunity of Oleksandr Onyshchenko, an MP from the People's Will faction accused of fraudulent conduct in energy trading.[106] Onyshchenko himself claimed that the case against him was fabricated and politically motivated, and fled abroad, where he himself has made allegations of corruption against the Poroshenko administration. There have been

[103] Kolomoyskyi funded some of the volunteer battalions and is reputed to have offered a bounty for the capture of separatist militants.
[104] Kolomoyskyi fell out of the president's favour in 2015, in a row over control of the state oil pipeline operator UkrTransNafta, and was replaced as governor of Dnipropetrovsk. His powerful bank, PrivatBank, was nationalized in 2016.
[105] Private conversation with a Rada member, February 2017.
[106] Sydorov, D. (2016), 'King's schemes. Charges against Onyshchenko', UNIAN Information Agency, 7 July 2016, http://www.unian.info/society/1405115-kings-schemes-charges-against-onyshchenko.html.

other recent attempts to lift the immunity of members of the Rada and prosecute them in respect of allegations of fraud and embezzlement. In his annual address on 7 September 2017, President Poroshenko suggested that parliamentary immunity might be abolished with effect from 1 January 2020, a proposal that is likely to meet with resistance.

Electoral reform

Electoral reform, though essential for Ukraine, is not making progress. Civil society, reformist parties and international experts are pressing for the following changes: a shift to an open-list proportional system for parliamentary elections; renewal of the CEC, which organizes and oversees elections; the enfranchisement of internally displaced persons and internal labour migrants; the application of effective and dissuasive penalties for violations of electoral law; and effective investigation of offences. There is also a need for continued reform of political financing, including the establishment of an electronic declaration system for the financial reports of political parties and candidates, and restrictions on campaign spending and advertising.

On 7 September 2017, President Poroshenko suggested that parliamentary immunity might be abolished with effect from 1 January 2020

The 2014 parliamentary election was held under the existing mixed system (proportional representation plus single-mandate constituencies). The proportional lists brought in new people, while the old guard hung on in the single-mandate districts. Reformists, with support from the Venice Commission,[107] have advocated an open-list proportional system for all elections in Ukraine. They call for the elimination of the single-mandate constituencies, which tend to preserve the influence of vested interests and bad practices such as vote-buying and the use of government resources in elections. The new ruling coalition's programme promised change. A new draft electoral code exists, but there is no consensus for adopting it. Open-list proportional representation would involve direct voting for candidates on party lists in all the regions. The system has some drawbacks, but would reduce the influence of vested interests.

The CEC is still as constituted under Yanukovych, with 13 of its 15 members now more than two years beyond expiry of their seven-year mandate (extended to allow local elections to be held in 2015). The CEC's head, Mikhail Okhendovskiy, was recently under investigation for corruption but remained in his post. In September 2017 the criminal investigation was suspended due to lack of evidence, and he claimed that the case against him had been politically motivated. President Poroshenko nominated 11 replacements for 12 members of the CEC, but many were seen as politically partial and were not accepted by the Rada.[108]

One move to reduce manipulation of elections is the provision of state funding for political parties.[109] Parties received more than UAH 90 million ($3.3 million)[110] from the state in the first quarter of 2017. These funds may not be used for election campaigning and are only paid to parties that reached the threshold of 5 per cent of the vote in the previous election, but from the next election the threshold for funding will be lowered to 2 per cent. The issue of state financing of parties remains controversial,

[107] The Venice Commission is an advisory body of the Council of Europe, composed of independent experts on constitutional law.
[108] Author's interviews in Kyiv, January 2017.
[109] Kosmehl, M. and Umland, A. (2016), 'Ukraine Introduces State Financing for Political Parties', *Harvard International Review*, 30 August 2016, http://hir.harvard.edu/ukraine-introduces-state-financing-political-parties-promising-reform-cosmetic-change/.
[110] At an exchange rate of UAH 1:US$0.0364, Reuters (2017), 'Currencies', http://uk.reuters.com/business/currencies (accessed 7 Sep. 2017).

as many politicians lack enthusiasm for openly regulated financing, and the public do not see why their taxes should fund what they perceive as corrupt entities.[111] The placing of paid advertisements in election campaigns is to be restricted, in order to establish a more level playing field for parties and reduce their 'capture' by private business interests.

Political party funding is monitored by the National Agency for Prevention of Corruption (NAPC), which became operational in the spring of 2016. Limits are set for donations to parties and candidates: donations are only permitted from Ukrainian legal entities and individuals; the maximum individual donation is 400 times the minimum monthly salary (UAH 3,200 – about $116),[112] while the maximum from legal entities is 800 times the minimum salary. Local party branches have to report quarterly on donations received and how they are used. Some parties have been fined for providing false information in their statements on property, income, spending and financial liabilities.

Public administration

A bloated bureaucracy, numbering around half a million people, is inefficient and provides opportunity for corruption

World Bank governance indicators place Ukraine in the 25th to 50th percentile for quality of governance, along with Russia, Belarus and much of Latin America. Ukraine has remained in this position more or less constantly since 1996.[113] A bloated bureaucracy, numbering around half a million people, is inefficient and provides opportunity for corruption. Reform has begun, assisted by large-scale financial support from the EU. The National Bank of Ukraine and the ministries of finance and the economy have made considerable progress. However, the resignation since 2016 of a number of reformist ministers and deputy ministers – such as Aivaras Abromavičius, minister of economy and trade from 2014 to February 2016 – constitutes a setback even though these individuals had already achieved a good deal in launching far-reaching reform.

A new Law on the Civil Service, adopted in December 2015, entered into force on 1 May 2017. Implementation of a strategy for reform of state administration started in July 2016. Henceforth all appointments have to be made on a competitive basis. The most senior appointments in all government departments are to be decided by a commission, in which four out of 12 members are from civil society (academics and NGO members). Experts from the Centre of Policy and Legal Reform (CPLR), a think-tank involved in the commission, suggest that the reform has been implemented in a 'back to front' manner: they believe that the ministries should have been reorganized first, in order to clarify the roles of senior civil servants. There is currently confusion over who should apply for senior positions and what their roles will be. But low salaries deter good people from applying. Training in strategic policy planning has begun, but civil servants tend to see this as interference in their work.[114]

[111] Author's interviews in Kyiv, January 2017.
[112] At an exchange rate of UAH 1:US$0.0364, Reuters (2017), 'Currencies', http://uk.reuters.com/business/currencies (accessed 7 Sep. 2017).
[113] World Bank (2017), Worldwide Governance Indicators, http://info.worldbank.org/governance/wgi/index.aspx#reports (accessed 20 Jul. 2017).
[114] Briefing by Ihor Koliushko, head of the board, Centre of Policy and Legal Reform (CPLR), Kyiv, February 2017.

Decentralization

Devolution from the highly centralized system of government has begun. It is enhancing local democracy and has the potential to empower communities. Reforms cover three main areas: administrative-territorial reforms (amalgamation of local government entities); devolution of executive power; and fiscal decentralization. Legislation was passed in 2014–15, but its constitutional underpinnings were not adopted because of opposition to the granting of special status to the occupied parts of the Donetsk and Luhansk regions in the east of the country. Draft legislation on decentralization had been on the agenda for a number of years; in 2008–09 implementation began but then stopped. In 2014 the then deputy prime minister and minister for regional development, Volodymyr Groysman (now prime minister), restarted the process.

A government decree on local self-government launched the reform in June 2014, and the amalgamation of communities began in February 2015.[115] In 2015, 159 amalgamated *hromady* (communities) were formed, the number reaching 400 by mid-2017. Previously, there had been 11,000 municipalities, with little power and no money. Eventually there will be no more than about 1,200. Amalgamation is voluntary and takes a few months, once the councils concerned have decided to go ahead with the process. Support from 50 per cent of the population is also required, with new *hromady* formed after local elections. In the region of Vinnytsia, for example, out of 800 municipalities, only about 50 will remain. There was a surge of support from local authorities for amalgamation in 2015–16, when they saw that they would have their own funds and could provide better services for their communities. Voluntary amalgamation is scheduled to go on for four to five years, after which the government will reorganize those communities that remain unreformed. Some parliamentary forces would like to stop amalgamation, however, and there have been allegations of political interference involving populist parties at local level.

Local taxes will play an important part in decentralization. In addition to raising their own revenues, local communities receive government grants for education, healthcare, infrastructure and regional development. There is also a tax-equalizing grant to reduce inequality between the regions. Some communities were not keen to amalgamate, but the new tax-raising powers are a major incentive, as they allow the *hromady* to keep tax receipts on property, parking and tourism, as well as 60 per cent of personal income tax receipts. Thanks to fiscal decentralization, the 159 amalgamated communities formed in 2015 increased their budget revenues by 50 per cent. Decentralization has had a positive effect in the education and healthcare sectors, where services have improved and spending has become more efficient.

Decentralization of regional planning in major sectors of the economy is also under way. For example, decisions on construction are no longer taken at central government level. A new regional policy has been developed with EU support, based on a framework law on regional policy. Strategic planning is to be conducted on a top-down basis for state funding, and on a bottom-up basis for regional decision-making. A State Fund for Regional Development provides subsidies similar to EU structural funds. The fund gets 1 per cent of the total state budget, distributing 80 per cent of this among all regions and 20 per cent to poorer regions such as Ternopil and Chernivtsi. In Soviet times, most subsidies went to factory towns, so after 1991 factories in poorer regions

[115] Jarábik, B. and Yesmukhanova, Y. (2017), 'Ukraine's Slow Struggle for Decentralization', Carnegie Endowment for International Peace, 8 March 2017, http://carnegieendowment.org/2017/03/08/ukraine-s-slow-struggle-for-decentralization-pub-68219.

such as western Ukraine closed as they had no resource base. Administrative capacity and the political integrity of oblast decisions are still weak, so the process is being closely monitored.[116]

Mass media

Creating a democratic, transparent and accountable media landscape is crucial to Ukraine's transformation. In Freedom House's press freedom ranking for 2016, Ukraine was classified as 'partly free', ranking 112th out of 199 countries.[117] (Its ranking is depressed by the lack of media freedom in Crimea and Donbas.) Although the main media companies are still owned by powerful vested interests, Ukraine has a genuinely pluralistic media environment. Television is the preferred source of news for 85 per cent of the population, but the internet is also very popular.[118] People are able to obtain news from multiple sources.

Creating a democratic, transparent and accountable media landscape is crucial to Ukraine's transformation

Ukrainian tycoons still own seven of the country's eight major television stations, giving some political parties disproportionate access to the media during election campaigns. Media assets also provide prominent business people with other means of influencing political and public life. President Poroshenko has retained ownership of his 5 Kanal channel, despite widespread calls for him to give it up. A package of amendments that came into force in October 2015 requires broadcasters and programme service providers to disclose detailed information about their ownership structures, including the identities of ultimate beneficiaries; companies are obliged to comply within six months, but this requirement has not yet been fully enforced. There is no independent press and media regulator.

A law adopted in 2014 and amended in 2015 established a new public broadcasting corporation,[119] overseen by a supervisory board of 13 openly elected members with strong civil society representation. The law made Ukraine's only state-owned broadcaster, the National TV and Radio Broadcasting Company (NTU), into an independent public broadcaster; the new entity was registered in January 2017. While NTU broadcasts can be viewed in 90 per cent of Ukrainian territory, its audience so far makes up less than 4 per cent of the total viewing audience. This is partly because the channel was previously popular with rural and older people for its Soviet-era content such as concerts, and this cohort of viewers no longer watches NTU because the content is now mainly news. The concept of public broadcasting is not yet widely understood in Ukraine. Because it is government-funded, people tend to think that the channel is state-run. Nonetheless, it is gaining in popularity due to the high quality of its content.

New media outlets have sprung up in the wake of the Euromaidan revolution. Many of them are actively trying to counter Russian propaganda in the world media. Among them are Hromadske TV, StopFake, Ukraine Crisis Media Centre, Euromaidan Press, and other websites and blogs. StopFake has a weekly programme reporting what demonstrably fake news has been circulating. It broadcasts on up to 30 television

[116] Based on discussion with Yuri Tretyak and Serhiy Maksymenko, members of the project 'Support for Ukraine's Regional Development Policy', February 2017.
[117] Freedom House (2017), *Freedom of the Press 2016: Ukraine*, https://freedomhouse.org/report/freedom-press/2016/ukraine.
[118] Internet penetration reached 50 per cent of the population in 2016, and 62 per cent of adults claimed to use the internet. See Pew Research Center (2015), 'Internet Seen as Positive Influence on Education but Negative Influence on Morality in Emerging and Developing Nations', http://pewrsr.ch/1MR57bp.
[119] Centre for Democracy and Rule of Law (2014), 'Law of Ukraine On Public Television and Radio Broadcasting of Ukraine', http://cedem.org.ua/en/library/law-of-ukraine-on-public-television-and-radio-broadcasting-of-ukraine/.

channels Ukraine-wide and has a website in 10 languages. However, the new channels cannot compete financially with the tycoon-financed ones, so they depend to a large extent on foreign funding.

Russian disinformation has severely damaged trust in Russian media and has dragged down opinion of other media with it

Combating propaganda and fake news from Russia has been a major challenge for the Ukrainian authorities, who lay themselves open to charges of censorship when they attempt to curb the influence of Russian channels, especially in the east and south of Ukraine. At least 70 per cent of broadcasting in Ukraine has hitherto been in Russian, but the government has been trying to tilt the balance towards Ukrainian-language services by establishing quotas in radio and television broadcasting. The law on quotas for the Ukrainian language on radio entered into force on 8 November 2016. It requires at least 25 per cent of songs and at least 50 per cent of programmes to be in Ukrainian. A 2017 law requires 75 per cent of television broadcasts to be in Ukrainian. On 15 May 2017, the government banned the use of Russian internet service providers and social media platforms such as Vkontakte. The ban has been partially observed (though Russian Federation media claim that it has not): it is estimated that use of Odnoklassniki and other Russian platforms fell by 50 per cent in Ukraine within a month of the ban, though it seems that many people are getting around the prohibition by accessing sites via European intermediaries.

Despite Ukraine's relatively free media space, public trust in the media is in decline once more, after reaching a high point in 2014. This may seem surprising, given the proliferation of new outlets, but Russian disinformation has severely damaged trust in Russian media and has dragged down opinion of other media with it. In addition, the continued dominance of tycoon-owned television channels, along with opposition among parts of the population to the government-imposed bans on some Russian channels and social media, has contributed to disillusionment.

Tensions have emerged in the journalistic community over what to report: some take the 'patriotic' view and avoid reporting what they consider negative issues, such as violations of the human rights of prisoners of war, because Ukraine is at war; others want to publish the truth, and are then labelled unpatriotic. In the government-controlled territories of Donbas, the EU is funding a Donbas Media Forum, training journalists on issues such as hate speech.[120]

Conclusions

The range of reforms being introduced is impressive and challenging for a country that, to quote Prime Minister Groysman, had drifted along for 23 years with its Soviet legacy intact. Defending the record of reform, he said that it could not all be implemented at once, not least because of the huge cost of sweeping changes such as education reform.[121] New legislation is also only the beginning; it needs to be robustly implemented. Ukrainian voters rate honesty above most other attributes in politicians, and want their politicians to communicate with them and fulfil promises made.

Civil society is not only watching closely but is willing to take action – as was evident when the head of the State Fiscal Service, Roman Nasirov, was arrested in March and then prevented by activists from leaving the hospital to which he had been taken. In 2017, civil society activists have complained of a loss of reform momentum. A number

[120] Comments by David Stulik, press and information officer at the EU Delegation in Kyiv, and Oksana Romaniuk, director of the Institute of Mass Information, Kyiv, in February 2017.
[121] Prime Minister Volodymyr Groysman, at Ukraine Reform Conference, London, 6 July 2017.

of developments, including setbacks to judicial reform, suggest that this pushback is real. While another Euromaidan-type movement is generally thought unlikely, real social anger could break out if governance does not improve and if reforms do not deliver wider economic and social benefits.

Continued corruption and rent-seeking remain the greatest threats to reform of Ukraine's democratic institutions

Continued corruption and rent-seeking remain the greatest threats to reform of Ukraine's democratic institutions. These problems are the product of a range of factors, including vestiges of the Soviet system and mentality, the dominance of state-owned industry, over-regulation and low salaries. Yet a change of culture and mentality takes time. Institutionally, Ukraine needs a new moral compass. This probably requires many members of the existing elite to quit politics and public life. The country also needs an honest judiciary; economic reform to boost incomes and thus reduce incentives for graft; a new electoral system that allows for fair access to the media; and resolute monitoring of progress.

Reformers hope that the 2019 presidential and parliamentary elections will not be brought forward. Voters need time to see the results of the nascent economic recovery, and of key reforms such as those due to be made to the pension system. If early elections were to be held, populist parties would most likely make gains. The international community needs to provide support and apply pressure – and Ukraine has to find the political will to make changes and make them stick. The recent apparent rowback on anti-corruption measures and other hesitation over reforms could be a sign that pre-election manoeuvring has started and that rivalry is mounting between the centres of shared power, the presidency and government, as occurred in 2005–10 with detrimental consequences.

6. Civil Society

Orysia Lutsevych

Empowered citizens

Across the post-Soviet space, Ukraine impresses observers as the most emancipated polity, its citizens ready to rise up for their rights against authority. In the past 15 years alone, Ukrainians have responded twice to injustice on the part of the ruling elite with powerful protest. In 2004 they revolted against a stolen election, and in 2014 against stolen aspirations for a closer relationship with Europe.

The 2014 Euromaidan revolution, otherwise known as the 'Revolution of Dignity', was an expression of dissent and civil disobedience that signalled a deep crisis of governance. With almost 20 per cent of the population participating, the Euromaidan was widely viewed as 'a struggle by citizens to defend their rights'.[122] It reflected popular support for European values, the rule of law and enhanced governance. Ukrainians demanded more freedom, human rights, economic security, open and transparent politics, the prosecution of corrupt officials, and signature of the EU–Ukraine Association Agreement and accompanying Deep and Comprehensive Free Trade Agreement (DCFTA).[123]

A pluralistic civic identity has emerged, in which values and attitudes to governance outweigh ethnic, linguistic or historical affiliations

This protest movement was met with force, both external and domestic. Russian 'little green men'[124] started the occupation of the Crimean peninsula. Ukrainian riot police in Kyiv killed over 70 protesters[125] and wounded many more. The casualties of the latter clashes are now venerated as the 'Heavenly Hundred',[126] a powerful testament to the value that Ukrainians place on the right to build a rules-based European state on their own terms, and to the high price they paid to regain this right. In this context, the Euromaidan paved the way for a different political establishment that pledged to reform Ukraine and restore justice.

The violent events of early 2014 and Russia's subsequent ongoing military aggression have boosted Ukraine's sense of national identity. A stronger collective national awareness has taken root. Across language and regional divides, 62 per cent of the population now identify themselves first as Ukrainian citizens, as opposed to 52 per cent in 2012. Ukrainians now demonstrate more respect for the national anthem, flag and Ukrainian language.[127] A pluralistic civic identity has emerged, in which values and attitudes to governance outweigh ethnic, linguistic or historical affiliations.

This newly crystallized political sensibility is articulated, above all, in demand for more pluralistic and representative democracy. A legacy of paternalistic government is slowly receding. Forty-four per cent of the population nationwide believe that 'the people hire the government and control it', as opposed to believing that 'people should be like children taken care of by the government'.[128] In other words, popular understanding of functional democracy has gradually expanded: people no longer define

[122] Ilko Kucheriv Democratic Initiatives Foundation (2014), 'Richnytsya Maydanu – opytuvannya hromads'koyi ta ekspertnoyi dumky' [Maidan anniversary – public and expert opinion poll], 19 November 2014, http://dif.org.ua/article/richnitsya-maydanu-opituvannya-gromadskoi-ta-ekspertnoi-dumki.
[123] Onuch, O. (2014), 'Social networks and social media in Ukrainian "Euromaidan" protests', *Washington Post*, 2 January 2014, https://www.washingtonpost.com/news/monkey-cage/wp/2014/01/02/social-networks-and-social-media-in-ukrainian-euromaidan-protests-2/?utm_term=.f08e3d309ec0.
[124] The term 'little green men' is often used to describe Russian soldiers without insignia who carried out the operation to annex Crimea, a tactic later replicated in Donbas.
[125] Thirteen riot policemen were also killed during the Euromaidan. See Glavcom (2016), 'U HPU rozpovily, skil'ky pravookhorontsiv zahynulo na Maydani' [GPU revealed how many law-enforcers died on the Maidan], 3 December 2016, http://glavcom.ua/news/u-gpu-rozpovili-skilki-pravoohoronciv-zaginulo-na-maydani-385995.html.
[126] 'Heavenly Hundred' is a Ukrainian reference to protesters killed in Kyiv on 18–20 February 2014.
[127] Kulyk, V. (2016), 'Ukrainian Identity under Euromaidan and the War', *Europe-Asia Studies*, 68:4, pp. 588–608, doi: 10.1080/09668136.2016.1174980.
[128] National Democratic Institute (2016), 'Opportunities and Challenges Facing Ukraine's Democratic Transition'.

democracy as merely the holding of free elections, but also expect more inclusive and accountable governance.

Endemic corruption is viewed as the number one problem preventing the country from developing politically and economically. Recent events have reinforced citizens' confidence and determination in demanding clean government. In 2009, 56 per cent of Ukrainians thought it pointless to fight corruption; in 2015, only 34 per cent shared this view.[129]

Just as importantly, the emerging democratic consciousness and the drive – led by highly motivated grassroots constituencies – for reform and national democratic transformation provide the context in which the conflict between Ukraine and Russia has evolved.

Mobilizing civil society

Active civil society is key to any functional democracy. Defined most commonly as the sum of institutions and active citizens located between the family, the state and the market – and as a space in which people associate voluntarily to advance common interests[130] – civil society influences public policy, holds state and private corporations accountable, responds to social interests and empowers citizens. It makes democracy more inclusive and facilitates feedback on policy.

Since independence in 1991, Ukraine has maintained a relatively open space for civil society. This partly reflects the legacies of the Soviet-era dissident movement, the post-Chernobyl environmental movement, and the activism of Afghanistan veterans' associations in pioneering independent civic engagement. It has also reflected Ukrainians' strong sense of autonomy from the state; their low trust in government; their preference for 'horizontal' social links rather than hierarchical structures; and the greater importance, compared to in Russia or Belarus, placed on self-expression. All these factors have helped to nurture an independent non-state sector in Ukraine.[131] In addition, international donors have helped to sustain an active cohort of citizens who have defended human rights, monitored elections, developed local communities, promoted free media, campaigned against domestic violence and mobilized for environmental causes.

As a result, and despite fundamental institutional problems, Ukraine scores relatively highly on measures of civic engagement compared with its regional peers. Among post-Soviet states, it has long had one of the highest rankings on the NGO Sustainability Index compiled by the United States Agency for International Development (USAID). After the Euromaidan revolution, this ranking improved further.[132] Despite being classed as a 'flawed democracy' in the Economist Intelligence Unit's Democracy Index, Ukraine scores as highly for political participation and civil liberties as EU members Poland and Slovenia, and higher than Romania.[133]

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[129] Kyiv International Institute of Sociology (2016), *Corruption in Ukraine: Comparative Analysis of National Surveys: 2007, 2009, 2011, and 2015*, Kyiv: Kyiv International Institute of Sociology, http://kiis.com.ua/materials/pr/20161602_corruption/Corruption%20in%20Ukraine%202015%20ENG.pdf.
[130] Anheier, H. K. (2004), *Civil Society: Measurement, Evaluation, Policy*, London: Routledge.
[131] Hrytsak, Y. (2015), 'Tsinnosti ukrayintsiv: pro et contra reform v Ukrayini' [Values of Ukrainians: Pro et Contra Reform in Ukraine], Zbruc.eu, 17 June 2015, https://zbruc.eu/node/37721.
[132] United States Agency for International Development (2016), *The 2015 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, Washington: USAID, https://www.usaid.gov/sites/default/files/documents/1861/Europe_Eurasia_CSOSIReport_2015_Update8-29-16.pdf.
[133] Economist Intelligence Unit (2016), *Democracy Index 2016: Revenge of the "deplorables"*, London: Economist Intelligence Unit, http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=Democracy-Index-2016.pdf&mode=wp&campaignid=DemocracyIndex2016.

The Euromaidan movement brought many citizens to the forefront of Ukraine's political transformation. Ukrainians also seem to have learnt from the mistakes made following the 2004 presidential election. When Viktor Yushchenko took office, his government pledged to put an end to the fusion of business and politics. This prompted NGOs and active citizens to disengage from the public sphere, as they counted on the establishment to deliver reform. In this they were bitterly disappointed.

Since the events of the Euromaidan, Ukraine has seen increased vigilance and engagement by civil society organizations (CSOs), along with the emergence of a new voluntary sector. The result has been increased bottom-up pressure for reform. Today the civil sector largely consists of two groups: voluntary self-organized groups; and well-established, professional, non-profit NGOs. Of these two cohorts, the voluntary sector in particular has expanded remarkably in the post-Euromaidan period. In response to Russia's attacks on Crimea and Donbas, various new initiatives have flourished to support internally displaced persons (IDPs), the Ukrainian army, and Anti-Terrorist Operation (ATO) veterans and their families. It is estimated, for instance, that around 300 new groups that unite ATO veterans have emerged.[134]

Voluntary groups enjoy the highest level of public trust among all civil society institutions. Fifty-three per cent of Ukrainians trust volunteers

Wary of incompetence and corruption in state institutions, Ukrainians have self-organized to fill gaps in services normally provided by the state. Influential new organizations have emerged to sustain such support, including Crimea SOS, Vostok SOS, Krylia Feneksa and Legal Hundred, among others.[135] Many of these groups started as support networks for protesters in Kyiv. Having impressed with their capacity to offer solutions in challenging situations, these volunteer groups have gained strong public recognition.

Surprisingly, volunteering and non-state initiatives have also surged in the southeast of Ukraine. Historical perspective is crucial to understanding the capacity of citizens in that region to engage in reform. Despite continuous Western assistance to civil society, little aid reached the southeast of the country prior to 2014. Nor was the local environment conducive to a vibrant civil society: an entrenched Soviet-era mentality, a paternalistic outlook on the part of government officials, a lack of critical thinking and decades of single-party rule[136] had led to a culture of submission and fear of challenging authority.

Yet after the retreat of Russia-backed separatists, under pressure from the Ukrainian army, from parts of Donbas in the summer of 2015, the region woke up to a new civic reality. For many, the restoration of Ukrainian control heralded the possibility of a transformation in the region's governance, but it also brought new challenges. The inflow of IDPs from the occupied territories placed a heavy burden on an already-depleted welfare system, with cities in Ukrainian government-controlled areas in the southeast of the country having to accommodate large numbers of IDPs. In response, active citizens joined forces with local authorities to find solutions and reorganize community life. IDPs also self-organized into support groups.

Voluntary groups enjoy the highest level of public trust among all civil society institutions. Fifty-three per cent of Ukrainians trust volunteers. In comparison, only 9 per cent of citizens trust the government.[137] Despite economic hardship, individual

[134] Interview with government official, Kyiv, February 2017.
[135] See http://legal100.org.ua/.
[136] The Party of Regions, originally from Donetsk, had a political and economic monopoly in the southeast of Ukraine.
[137] Kyiv International Institute of Sociology (2017), 'Dovira sotsial'nym instytutsiyam' [Trust in social institutions], 1 February 2017, http://www.kiis.com.ua/?lang=ukr&cat=reports&id=678&page=1.

donations to voluntary groups have soared. Thirty-seven per cent of Ukrainians gave money to charitable causes in 2016, up from 21 per cent in 2012.[138] Support was provided for IDPs, reconstruction of schools and houses, assistance to families affected by war and rehabilitation of veterans. From the start of the conflict with Russia in 2014, a network of volunteer civil self-defence units – a so-called 'people's army' – started to emerge. Ukrainian citizens supported these groups as well as regular army units by providing medical supplies, food and equipment.[139] Mobilizing inside the country and among the diaspora, volunteers also organized supplies to the front line of night-vision goggles, home-made drones, protective gear and paramedical equipment, often purchased on eBay.

An inflow of reform champions from outside the system started a process of 'positive selection' in public service for the first time

One of the most notable differences with the events of 2004 has been an inflow of many civil society leaders and volunteers into Ukraine's legislative and executive branches. The election of new members of parliament (MPs) from the media, civil society and the private sector, as a result of the legislative election of October 2014, brought a substantial number of change-makers inside the system for the first time in Ukraine's history. These 'reform champions' became the main partners for the CSOs driving reform. They started a process of 'positive selection' – that is, recruitment on merit and suitability – for public servants, a revolutionary step for a country that for decades had been run predominantly by people who entered public service to enrich themselves, protect their private interests and abuse office. In doing so, the new 'reform champions' helped integrate non-state trust networks into public politics.

Many more preferred to remain as volunteers and to assist from outside formal politics, believing their leverage would be stronger if they operated at arm's length from what they perceived as corrupt government agencies. Engagement by non-state sector activists was facilitated by the establishment of reform project offices in government ministries. These Western-funded groups provided assistance, and drafted new strategies and regulations. For example, the reform office at the Ministry of Defence (MOD) engaged activists in reforming logistics, housing policy and food supply to the armed forces. Volunteers contributed to the drafting of a *Strategic Defence Bulletin*.[140]

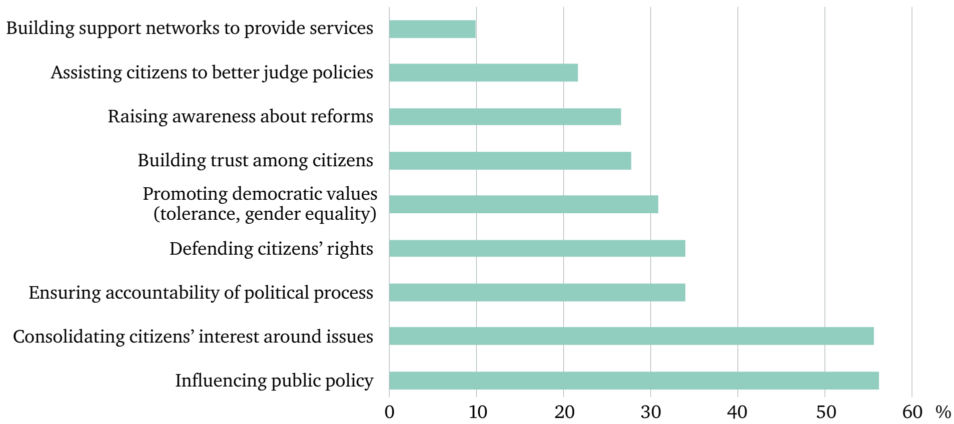
Since 2015, other forms of self-organization have started taking hold. Housing associations have expanded, taking advantage of a new law adopted in 2015. Even in the east of Ukraine, known for historically low levels of civic mobilization, activity has surged. In just 11 months in 2016, the number of housing associations in the city of Mariupol grew almost fourfold.[141] Such associations have brought citizens together to take charge of communal spaces and improve the quality of utility services in towns and cities. Most importantly, they have helped to democratize decision-making at the local level. In the words of one assessment, there is evidence that 'the housing associations have provided a powerful and sustainable example of collaboration between civic and political sectors to address community interests'.[142]

[138] Ilko Kucheriv Democratic Initiatives Foundation (2017), 'Blahodiynist' i volonterstvo-2016: rezul'taty sotsiolohichnoho doslidzhennya' [Charity and volunteering 2016: results of sociological research], 21 February 2017, http://dif.org.ua/article/blagodiynist-i-volonterstvo-2016-rezultati-sotsiologichnogo-doslidzhennya.
[139] Puglisi, R. (2015), *A People's Army: Civil Society as a Security Actor in Post-Maidan Ukraine*, Rome: Istituto Affari Internazionali, http://www.iai.it/en/pubblicazioni/peoples-army.
[140] Office of the President of Ukraine (2016), 'Ukaz Prezydenta Ukrayiny No.240/2016' [Decree of the President of Ukraine No.40/2016], 3 June 2016, http://www.president.gov.ua/documents/2402016-20137.
[141] Berdatenko, O. and Larock, K. (2017), 'Nove opytuvannya zasvidchuye prahnennya ukrayintsiv do zmin' [New Survey Shows Ukrainians Want Change], International Republican Institute, 28 April 2017, https://www.iri.org.ua/novini/nove-opituvanna-zasvidcue-pragnenna-ukrainciv-do-zmin.
[142] Baker, M. (2016), 'Fostering Responsive and Collaborative Citizen Solutions in Ukraine', Case Story, 2016 CLA Case Competition, USAID, https://usaidlearninglab.org/sites/default/files/resource/files/fostering_responsive_and_collaborative_citizen_solutions_in_ukraine.pdf.

Driving the reform agenda

The traditional, well-established CSOs that existed prior to the Euromaidan worked at the national and regional levels to promote reforms. These groups, too, have used the opening up of the political system to promote their ideas. In a survey of 162 CSOs conducted for this report, respondents identified three main purposes for their actions (see Figure 3).[143] Their number one goal is to influence policy (56.2 per cent of respondents). Their second objective is to consolidate citizens' interest around issues to achieve common goals (55.6 per cent). Their third priority (34.0 per cent) is to hold government to account. In comparison to these aggregate national responses, regional CSOs are more committed to promoting democratic values and helping citizens understand reform, and less inclined to believe that it is their function to influence public policy.

Figure 3: In a democratic system, what are the three most important functions of civil society?



Source: Chatham House online survey of 162 Ukrainian CSOs, conducted via Survey Monkey from February to May 2017. Forty-three per cent of respondents were Kyiv-based, and 56 per cent were from the regions.

Compared with the situation in 2004, the strategy of organized civil society is now more sustainable. At the national level, CSOs have sought to overcome fragmentation by creating coalitions. The so-called 'civic sector of Euromaidan', which united many well-established NGOs, led to the creation of a group known as the Reanimation Package of Reforms (RPR) to sustain pressure on the country's new leadership. This coalition of 70 NGOs proposed its own plan to reform Ukraine, and has facilitated the adoption of around 120 new laws in parliament since 2014. Other active groups have consolidated into coalitions such as the Movement for Transparent Local Budgets,[144] Civic Initiatives of Ukraine,[145] Nashi Groshi[146] and Nova Kraina.[147]

The impact and public image of CSOs have improved, thanks to their high media visibility, their active use of social networks and the state's openness to engagement with them. In 2016, according to one survey, popular trust in CSOs

[143] Online questionnaire conducted via Survey Monkey from February to May 2017. Of 162 respondents, 43 per cent were Kyiv-based and 56 per cent were from the regions.
[144] http://probudget.org.ua/news/.
[145] http://ngonetwork.org.ua/.
[146] http://nashigroshi.org/.
[147] http://novakraina.org/.

had almost doubled from 2013, with 37 per cent of Ukrainians trusting these organizations.[148] The overhaul of public procurement, the creation of a public broadcaster, the establishment of new patrol police, administrative decentralization, gas market reform, the procurement of medicines by international organizations and the promotion of transparency in the extractive industries – all have become possible thanks to advocacy by non-profit organizations.

Domestic and international civil society groups, in particular the Anti-Corruption Action Centre and Transparency International, have been instrumental in creating a new anti-corruption framework

Domestic and international civil society groups, in particular the Anti-Corruption Action Centre and Transparency International, have been instrumental in creating a new anti-corruption framework, which includes a new National Anti-Corruption Bureau of Ukraine (NABU) and a new National Agency for Prevention of Corruption (NAPC) (see Chapter 7, in particular, for more detail). CSOs have helped to bring credibility to the anti-corruption process. All nine members of the commission to appoint the new head of the NABU were representatives of civil society, nominated by the president, parliament and government. Pressure for the creation of a new anti-corruption court, the renewal of the Supreme Court, and the launch of an e-declaration system for assets of government officials (including judges) have enabled incremental progress in anti-corruption efforts.

In terms of building a new judiciary, Ukraine's innovation has been the establishment of a Public Integrity Council (PIC).[149] Formed in 2016 from representatives of civil society and academia, this independent body is supposed to vet judges according to criteria of ethics and professional integrity. The challenges it faces remain much in evidence. In selecting new judges for the Supreme Court, the council expressed concerns over 88 judges – yet of these, two-thirds were approved for the job by the High Qualification Commission of Judges of Ukraine.[150] Pervasive corruption still makes it difficult to reform the system, even with strong oversight.

Western funding has played a critical role in CSO-led reform efforts. It is estimated that the volume of grants to Ukraine almost doubled after the Euromaidan. Around $1 billion a year is now directed to reform-related projects, with roughly 30 per cent of this assistance channelled via civil society – making for an annual operation worth roughly $300 million.[151] USAID has doubled its assistance: in 2016 it allocated $67 million to programmes supporting anti-corruption efforts, good governance and civil society in Ukraine.[152]

The story of ProZorro

ProZorro, a digital public procurement system, was developed by a group of Euromaidan activists. They were stock exchange traders, digital marketing experts,

[148] Volosevych, I. (2016), 'Ukrayina: pidsumky Revolyutsiyi Hidnosti. Yak zminylasya krayina i narod' [Ukraine: Results of the Revolution of Dignity. How the country and the people have changed], Vox Ukraine, 31 August 2016, https://voxukraine.org/2016/08/31/pre-and-post-war-ukraine-ua/.
[149] Democracy Reporting International (2017), 'Public Council of Integrity – Ukraine's know-how in selection of judges (infographic)', 11 April 2017, http://democracy-reporting.org/public-council-of-integrity-ukraines-know-how-in-selection-of-judges/?utm_source=newsletter&utm_medium=email&utm_campaign=right_of_peaceful_assembly_in_ukraine_regulatory_environment_research&utm_term=2017-04-20.
[150] Public Integrity Council (2017), 'VKKS podolala 2/3 vysnovkiv Rady shchodo kandydativ do Verkhovnoho Sudu' [The HQCJ overturned 2/3 of the Council's conclusions regarding the candidates for the Supreme Court], 10 July 2017, https://grd.gov.ua/news/70/vkks-podolala-2-3-vysnovkiv-rady-shchodo-kandydativ-do-verkhovnoho-sudu.
[151] Uryadoviy Kur'er (2016), 'Olena Trehub: «Dlya bahat'okh v Ukrayini sfera mizhnarodnoyi dopomohy stala biznesom»'[Olena Tregub: 'For many in Ukraine, the sphere of international assistance has become a business'], 20 May 2016, http://ukurier.gov.ua/uk/articles/olena-tregub-dlya-bagatoh-v-ukrayini-sfera-mizhnar/.
[152] U.S. Department of State (2017), 'Congressional Budget Justifications: Foreign Operations', https://www.state.gov/documents/organization/252734.pdf.

management consultants, investment bankers, and activists at Transparency International. With a market value equivalent to around $11 billion, public procurement in Ukraine was a well-documented source of illegal enrichment. The value of bribes paid in relation to Kyiv road construction alone has been estimated at $180 million annually.[153]

When the Viktor Yanukovych regime collapsed in February 2014, one of these activists, Oleksandr Starodubtsev, an expert in digital trading systems, started an informal initiative hosted by Pavlo Sheremeta, then the dean of the Kyiv School of Economics. With $35,000 in start-up funding from six online trading companies, Starodubtsev and his team developed the first prototype of a digital platform that would later become ProZorro, meaning 'transparent' in Ukrainian.[154] The developers used open-source code, both to protect it from abuse and to increase trust in the system. 'Everybody sees everything' was the slogan of the platform. When Sheremeta became the minister of economic development and trade in February 2014, he declared reform of public procurement his top priority and started working on a new legal framework for it. The IMF also made reform of the procurement system a condition for disbursement of funding under its framework programme for Ukraine.

Georgian reformers played an important part in inspiring and guiding the Ukrainian teams. David Margania, who had modernized the Georgian public procurement system, and Tato Urdzymelashvili, the former head of Georgia's state public procurement agency, helped to galvanize support for the proposed reforms.

In July 2015, Ukraine's MOD conducted the first test of the system, trialling it with purchases under $10,000 in value. It was a truly revolutionary experiment. Yuri Husyev, a new deputy minister of defence and a former volunteer, wanted to restore the trust of taxpayers. Artur Pereverziev, the new head of the MOD's reform office for digital procurement and himself a former Euromaidan volunteer, oversaw the creation of the necessary legal framework at ministerial level for digital procurement to be enabled.

The launch was bumpy. The system rapidly crashed as thousands tried to access the website. Yet ProZorro also quickly demonstrated its capacity to save money, enable procurement of better-quality products and help the government to diversify suppliers. In the six-month pilot phase, prices dropped by 17 per cent and savings of $9 million were delivered.[155]

The system's wider roll-out was funded by the Western NIS Enterprise Fund, which signed a $50,000 agreement with Transparency International to launch ProZorro nationwide, thus forming an alliance between business, civil society and government. ProZorro was incubated in the non-state space and only later transferred to the state. Thirty paid staff and 150 volunteers were involved at different stages.[156] As of today, Transparency International has invested about $800,000 to develop, upgrade, promote and monitor the system.[157]

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[153] Presentation about ProZorro provided by Oleksandr Starodubtsev, March 2017.
[154] ProZorro is also a play on the word 'Zorro', the name of a popular fictional hero who defends common people against tyrannical officials and other villains.
[155] Author's interview with Yuri Husyev, April 2017.
[156] Mordovtsev, M. (2016), 'V Ukrayini nastala ProZorro epokha. Shcho tse nam dast'?' [The ProZorro Era has arrived to Ukraine: What will it bring?], 4 August 2016, http://news.finance.ua/ua/news/-/381691/v-ukrayini-nastala-prozorro-epoha-shho-tse-nam-dast.
[157] 'ProZorro: How did a Dream Become True?', Transparency International publication, March 2017.

To ensure the effects of the digital procurement reform were sustained, several of ProZorro's managers from outside the state sector had to take public office. Having done so, they energetically lobbied parliament for a new law requiring ProZorro to be used for all public procurement – at both national and regional levels. In December 2016, the law was adopted at the first reading and without a single amendment. The speed of this reform was unprecedented: it had taken only two years to overhaul the old system. In recognition of this, in 2016 ProZorro won the World Public Procurement Awards. Since its launch, the system had saved over UAH 31.2 billion ($1.1 billion)[158] in public funds.[159]

Pushing for an accountable state

Since the Euromaidan, the push for transparency in public life has gained new momentum. CSOs have lobbied for new tools to restrict malfeasance by vested interests and improve accountability. More information about the state has become available on a government website (www.e-data.gov.ua) that lists all public spending. A portal for international assistance, www.openaid.org, has been launched to track major loans and grants to Ukraine. ProZorro itself uploads details of public tenders to the website bi.prozorro.org. The Ministry of Justice has opened 13 public registers, where citizens can access information about registered companies, CSOs, media organizations and court decisions, as well as the names of individuals convicted of corruption. A new law on transparency in media ownership requires full public disclosure of shareholdings in media companies. Meanwhile, the introduction of the system of e-declarations of government officials' assets has set a new benchmark for transparency in the public sector.

Administrative decentralization has played an important role in reinforcing accountability, bringing government closer to the people

The benefits of these initiatives have been significant. Increased transparency has empowered CSOs to expose inaction and misuse of power. They are now more effective as fact-checking platforms, able to hold the government to account by providing information to the media about the status of reforms. For example, when the government reported progress in the fight against corruption, the Nashi Groshi network of investigative journalists rebutted the claim: it found that out of 362 government officials convicted of corruption, only five had been sent to prison in 2016. Nashi Groshi also highlighted the fact that the majority of corruption cases involved sums between $40 and $400.[160] Even though the sums involved are seemingly small, this exposure of the government's failure in tackling corruption is significant in two respects. On the positive side, it shows that CSOs are making a difference in holding government to account. On the downside, the revelation of numerous instances of corruption going unpunished risks undermining faith in reforms and increasing the disillusionment of citizens.

Administrative decentralization has played an important role in reinforcing accountability, bringing government closer to the people. The reform is widely supported by Ukrainian citizens, with 67 per cent already reporting improvements in governance as a result of decentralization.[161] New initiatives are emerging to mobilize citizens locally, with the aim of helping them to exercise civic oversight and drive

[158] At an exchange rate of UAH 1:US$0.0364, Reuters (2017), 'Currencies', http://uk.reuters.com/business/currencies (accessed 7 Sep. 2017).
[159] http://prozorro.gov.ua/.
[160] Nashi Groshi (2017), 'Khabari-2016. Koho posadyly i za shcho?' [Bribes 2016. Who was jailed and for what?], 23 February 2017, http://nashigroshi.org/2017/02/23/habari-2016-koho-posadyly-i-za-scho/.
[161] Ukrinform (2016), '67% ukrayintsiv vidchuly pokrashchennya vid detsentralizatsiyi' [67% of Ukrainians felt improved from decentralization], 27 December 2016, https://www.ukrinform.ua/rubric-society/2146950-67-ukrainciv-vidculi-pokrasenna-vid-decentralizacii.html.

local development. Since 2013, 23 per cent of Ukrainians have attended at least one community meeting, while 16 per cent have got together with others to raise issues with local officials (and twice that share have declared their willingness to do so if provided with an opportunity).[162]

The need for civil society oversight has increased as the fiscal component of decentralization has resulted in the allocation of additional resources to authorities at the community level

The need for oversight has increased as the fiscal component of decentralization has resulted in the allocation of additional resources to authorities at the community level. Civil society has responded by monitoring the transparency of city management[163] and local budgets, which have increased by almost 30 per cent compared to 2016 due to fiscal decentralization.[164] Public participation in budget decision-making, also known as 'participatory budgeting', has benefited from technical support from non-profit groups such as Social Boost, which provided software to dozens of cities, including Kyiv, Kirovohrad, Lviv and Odesa. Amounts allocated via participatory budgeting so far have been minuscule, however. In Kyiv, participatory budgeting accounts for only 0.15 per cent of the total budget, but it still helps citizens to become interested in the affairs of the city and express their opinions. In Lviv, around 15 per cent of inhabitants visited the special participatory budget website,[165] with around 14,000 people voting for various projects.[166]

Despite this progress, CSOs still struggle to ensure effective checks and balances within the system of governance. Ukraine's score for 'voice and accountability' in the World Bank's World Governance Indicators has improved slightly, from a ranking in the 41st percentile in 2005 to one in the 48th percentile in 2015. Its move up the ranking reflects recognition of increased transparency in the state budget and growing trust in the new patrol police. Nonetheless, Ukraine's percentile rank for this indicator remains far lower than the one for Poland, which occupies the 80th percentile.[167]

A growing reform 'toolbox'

Ukraine is transforming from the ground up, thanks to active grassroots groups of committed individuals and well-established CSOs that use a variety of tools to promote their agendas. Some of this engagement in policymaking is facilitated and welcomed by national and local authorities; some is secured by law; and some is informal. According to the survey of civic organizations conducted for this report, CSOs use a variety of instruments to influence policy.[168] The most common include participation in public councils, provision of information to the media, and input of policy ideas and legislative drafts during public policy consultations. Many CSOs have reported working individually with decision-makers on developing new laws and regulations. They also monitor publicly available information and use Ukraine's Freedom of

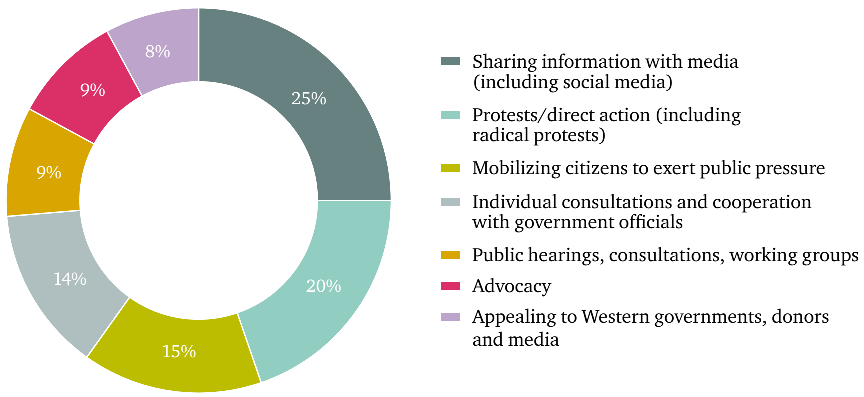
[162] National Democratic Institute (2017), 'NDI Research on Opportunities and Challenges Facing Ukraine's Democratic Transition', 3 February 2017, https://www.ndi.org/publications/ndi-research-opportunities-and-challenges-facing-ukraine%E2%80%99s-democratic-transition.
[163] https://transparentcities.in.ua/curiosity-transparen/.
[164] Public Partnership 'On Transparent Local Budgets!', Odessa Regional Organization of the NGO 'Committee of Voters of Ukraine' and Open Society Foundation (2016), *Indeks Prozorosti-Uchasti-Dobrochesnosti Mistsevykh Byudzhetiv 2016* [Transparency, Participation and Integrity Index of Local Budgets 2016], http://probudget.org.ua/db_pic/images/files/file_1484574526.0942.pdf.
[165] https://gb.city-adm.lviv.ua/.
[166] Yurasov, S. (2017), 'Méry otdayut den'hy: kak pervye horoda vnedryayut Byudzhet uchastyya' [Mayors allocate money: how the first cities are implementing the Participation Budget], Liga.net, 26 January 2017, http://biz.liga.net/all/it/intervyu/3592158-mery-raskoshelivayutsya-kak-pervye-goroda-vnedryayut-byudzhety-uchastiya.htm.
[167] World Bank (2017), World Governance Indicators, http://info.worldbank.org/governance/wgi/#reports (accessed 23 Jul. 2017).
[168] Chatham House online survey of 162 Ukrainian CSOs, conducted via Survey Monkey from February to May 2017. Forty-three per cent of respondents were Kyiv-based, and 56 per cent were from the regions.

Information Act to access government data. Anti-corruption groups at the regional level use similar tools, but with more emphasis on investigative reporting, civic education and provision of legal consultation.[169] To a lesser extent, CSOs have used legal instruments (such as filing court cases) or have worked with political parties to oversee and enforce reform.

It should be noted that not all of these tools are new: some have existed since the early 2000s. Post-Euromaidan, the most significant innovations have been enhanced transparency and the inclusion of CSOs' input in shaping new anti-corruption agencies and reforming the courts and police. New platforms that accommodate engagement with civil society have also developed within the Cabinet of Ministers. The Reform Delivery Office, the new Policy Planning Unit, the Strategic Communication Unit and the Strategic Advisory Group on Reforms all engage think-tanks and advocacy groups. These offices still have to prove their ability to collaborate meaningfully with CSOs, as positive outcomes are frequently undermined by opacity in policymaking. Stakeholder consultations, and discussion of policy options and their impact, are still more the exception than the rule.[170] CSOs and the Ministry of Justice have been working on a new law on public consultation that could make policymaking more inclusive and transparent. However, the ministry is also stalling adoption of the law.

The Chatham House survey of CSOs provides an indication of which tools are considered most effective in influencing policy in the current political culture. CSOs believe indirect pressure via the media, civic protests, mobilizing public opinion and individual engagement with government officials to be most effective in promoting policy change. Institutionalized cooperation between state and non-state sectors is viewed as less potent (see Figure 4). At the regional level, CSOs demonstrate more frequent use of freedom-of-public-information legislation but are less involved in public consultation processes than are Kyiv-based groups.

Figure 4: Which form of civic action is most effective in the current political system?



Source: Chatham House online survey of 162 Ukrainian CSOs, conducted via Survey Monkey from February to May 2017. Forty-three per cent of respondents were Kyiv-based, and 56 per cent were from the regions.

[169] Tyshchuk, T. (2016), 'The Power of People: What Helps and What Prevents CSOs from Combatting Corruption in Ukraine', Vox Ukraine, 15 September 2016, https://voxukraine.org/2016/09/15/anti-corruption-reforms-en/.
[170] The Ministry of Economic Development and Trade is leading the way in this area with its public consultations on deregulation and the government's export promotion strategy. Better Regulation Delivery Office (2017), *Publichnyy dialoh yak chastyna efektyvnoho rehulyuvannya* [Public dialogue as part of effective regulation], 9 March 2017, http://brdo.com.ua/press-room/publichnyj-dialog-yak-chastyna-efektyvnogo-regulyuvannya/.

Widening the circle of change-makers

CSOs acknowledge the importance of 'people power' in promoting reforms, but they invest insufficient effort and resources into achieving viable engagement with ordinary concerned citizens. Only 44 per cent of the CSOs surveyed mobilize citizens for civic action, instead focusing their attention mostly on the state. As a result, the incidence of direct civic activism by citizens to correct policies remains strikingly low, and public awareness of reforms limited. Fewer than 5 per cent of Ukrainians in 2016 reported corruption to the police, filed complaints, participated in public hearings or discussed legislation. Many indicators relating to these issues have deteriorated since 2013.[171] Citizens are unsure about the best way to engage in reforms, and only 1 per cent believe it is their responsibility to do so.[172]

In part, this situation can be attributed to low awareness of civic rights, low trust in law enforcement agencies and growing insecurity due to the impact of the military conflict in the east. Disillusionment with the current political class, along with exhaustion on the part of activists, makes it harder to widen civic mobilization.

Yet these are not the main barriers to effective civic pressure. A bigger obstacle is the composition of funding. Because pro-reform CSOs have ample access to Western funding, they rarely reach out to domestic citizens for financial contributions. Traditional advocacy groups rely almost entirely on Western funding. For example, in 2015 the RPR coalition received around €500,000 from Western funders for its secretariat.[173] Donations from Ukrainian businesses and individuals to the Ukrainian chamber of Transparency International constitute only 4 per cent of the chamber's budget. Another survey reported that only 43 per cent of CSOs receive donations from citizens, and that funding from this source accounts for only 15 per cent of their budgets.[174] Moreover, a recent surge in individual donations has mostly benefited charitable foundations assisting the ATO effort rather than non-profit groups that promote reforms.

Advocacy is another problem area. Civic advocacy campaigns are run by well-established and well-paid professionals from the non-governmental/non-profit sector, with little to no engagement of the wider public. Nationwide, only 12 per cent of the Chatham House CSO survey respondents claimed that they could wield power via their membership base, and only 21 per cent believed they could mobilize citizens. Regional groups seem to be more connected to citizens, with 29 per cent claiming that they have the capacity to mobilize citizens and 40 per cent claiming that citizens support their goals. This gap between advocacy-oriented CSOs and concerned citizens weakens the effectiveness of bottom-up reforms. CSOs' special access to government and the media leaves local voluntary efforts detached from national centres of power. Few groups have acted upon citizens' growing interest in joining CSOs and learning how best to engage with the state. As Figure 3 shows, CSOs assign relatively low importance to the functions of building trust, raising awareness about reforms and helping citizens better judge policies. Activity *on behalf of* citizens rather than *with* citizens prevails.

[171] See Volosevych (2016), 'Ukrayina: pidsumky Revolyutsiyi Hidnosti. Yak zminylasya krayina i narod'.
[172] National Reform Council (2017), 'Til'ky 1% ukrayintsiv vvazhaye, shcho vidpovidal'nist' za reformy nesut' hromadyany derzhavy' [Only 1% of Ukrainians believe that responsibility for reforms lies with citizens], http://reforms.in.ua/ua/news/tilky-1-ukrayinciv-vvazhaye-shcho-vidpovidalnist-za-reformy-nesut-gromadyany-derzhavy.
[173] Reanimation Package of Reforms (2016), *Annual report 2015*, http://rpr.org.ua/richni-zvity/.
[174] Palyvoda, L., Vinnikov, O. and Kupriy, V. (2016), *Defining Civil Society for Ukraine – Research Report*, Kyiv: CCC Creative Center, https://www.researchgate.net/publication/302901993_Defining_civil_society_for_Ukraine.

This lack of capacity among established groups to engage citizens in advocacy sustains what is sometimes termed an 'NGO-cracy', a system in which professional activists use access to domestic policymakers and Western donors to influence public policy yet are disconnected from the public at large.[175] This is especially relevant at the national level in Ukraine. Many CSO leaders have confessed that Western conditionality and pressure have led to the promotion of policies and reforms that otherwise would generate little interest.

Reform impacts: risks and opportunities

Despite weak state institutions, a distorted media space and a corrupt political culture, Ukrainian civil society expresses confidence in its capacity to promote change. Impressively enough, 30 per cent of CSOs surveyed claim that they have an impact on policy all or most of the time; 54 per cent report having an impact some of the time, depending on the issue.[176] There is less optimism at the regional level, where 29 per cent of CSOs believe they have no impact or rarely have an impact.

Citizens at large are also becoming more optimistic, albeit from a lower base: in a 2015 survey, 28 per cent of respondents considered NGOs effective in tackling corruption, up from 14 per cent in 2007. Among all institutions listed in the survey, NGOs registered the largest increase in perceived effectiveness at fighting corruption.[177]

One important democratizing effect of civil society has been the integration of some non-state sector trust networks into the political process

One important democratizing effect of civil society has been the integration of non-state sector trust networks into the political process. The absorption of volunteer battalions into the Ministry of Interior and MOD, the institutionalization of ProZorro, the entry of several civil society representatives into political parties, and the presence of civic activists in the PIC and on various commissions – all have signified citizens' growing willingness to entrust the state with the delivery of important political functions. By becoming co-creators of new norms and institutions, citizens now have more incentive to participate in politics. In effect, the efforts of civil society have partly translated the collective will of the citizenry into concrete state actions and policies – this trend is significant for the further democratization of Ukraine.[178]

Risks from within

Prospects for further reforms are undermined by the complex and difficult operating environment. Elements from Ukraine's 'old' system are defending their interests and seeking retribution against anti-corruption actors. The backlash started in March 2017 with the approval of amendments to the law on e-declarations for government officials. The amendments oblige all citizens affiliated with anti-corruption bodies, including trustees and sub-contractors, to complete the same extensive e-declaration forms as government officials. The legislation was initially designed to facilitate disclosure and prevention of corruption in the public sector, but its amended form targets individuals rather than civic organizations. Thus, instead of increasing public scrutiny of the NGO sector, it serves as a retaliation measure through which vested

[175] Lutsevych, O. (2013), *How to Finish a Revolution: Civil Society and Democracy in Georgia, Moldova and Ukraine*, Briefing Paper, London: Royal Institute of International Affairs, https://www.chathamhouse.org/publications/papers/view/188407.
[176] Chatham House online survey of 162 Ukrainian CSOs, February to May 2017.
[177] Kyiv International Institute of Sociology (2015), 'Stan koruptsii v Ukraini' [A State of Corruption in Ukraine], http://kiis.com.ua/materials/pr/20161602_corruption/Corruption%20in%20Ukraine%202015%20UKR.pdf.
[178] Tilly, C. (2007), *Democracy*, Cambridge: Cambridge University Press. See 'Chapter 4: Democracy and Trust'.

interests can harass activists. In one example, ANTAC, a leading anti-corruption group, faced a well-funded and coordinated smear campaign against one of its leaders.[179]

The lack of effective platforms for citizens to express constructive discontent and contribute ideas could lead to a backlash against reforms and a resumption of the 'politics of the square'

Growing popular dissatisfaction with inadequate public service provision,[180] and the lack of effective platforms for citizens to express constructive discontent and contribute ideas, could eventually lead to a backlash against reforms and even a resumption of the 'politics of the square'. Public trust in government remains critically low. Public protests offered a means of last resort for correcting the trajectory of Ukraine in 1990, 2004 and 2013 – the same could happen again if current reform efforts falter. Another major Euromaidan-style protest, but with increased availability of arms as a result of the conflict in the east, would likely turn into violent confrontation with the authorities.

The risks of populism and radicalization remain real. The mobilization of several veterans' groups by political parties to block coal supplies from the occupied Donbas region, despite the clear economic damage to Ukraine, offers a warning that some elements within the country's emerging civil society could choose a more confrontational and radical path. The Azov Battalion, which started as a voluntary self-defence unit and later became part of the National Guard, united many radical nationalists from all over Ukraine. It promotes a radical agenda of ceasing all economic, cultural and political bilateral relations with Russia and has an anti-EU agenda. The Azov Battalion developed a new nationalist movement, Civic Corp Azov, that boasted a membership of 10,000. In October 2016 the Corp transformed into a new political party, Nationalist Corp.[181] The party is gaining visibility and mobilizing capacity among young people to hold radical protests, which most recently caused disruption at the Kyiv offices of Sberbank, a Russian bank. Freedom House's Nations in Transit project has recently downgraded Ukraine's score for civil society 'due to the growing impact and visibility of intolerant, extremist organized groups in the public space'.[182]

Populist parties in Ukraine are now scoring higher in voter preference polls than most parties of the ruling coalition. With simple messages and promises of easy solutions, these parties appeal to constituencies disaffected with mainstream politics, and their rise threatens the broader reform process. Activists from a pro-Russia group called Ukrainian Choice are further contributing to internal destabilization. The group is affiliated to Viktor Medvedchuk, a friend of Vladimir Putin and the Russian president's key ally in Ukraine. Ukrainian Choice has sought to hijack decentralization, recruiting local activists to mobilize communities into declaring fiscal independence from Kyiv, and into forming illegal 'people's territorial communities'. The ultimate goal of this network is the federalization of Ukraine and closer political and economic relations with Russia.[183]

[179] Novoe Vremya (2017), 'Informatsyonnaya y ne tol'ko ataka na Tsentr protyvodeystvyya korruptsyy: chto proyzoshlo y kto za étym stoyt' [A (not only) information attack on the Center for combating corruption: what happened and who is behind it], 9 June 2017, nv.ua/ukraine/events/informatsionnaja-i-ne-tolko-ataka-na-tsentr-protivodejstvija-korruptsii-chto-proizoshlo-i-kto-za-etim-stoit-1286993.html.
[180] National Democratic Institute (2016), 'Opportunities and Challenges Facing Ukraine's Democratic Transition: Nationwide Survey with eight local oversamples'.
[181] Khomenko, S. (2016), 'Partia Azova: shche odni natsionalisty na marshi' [Azov Party: one more nationalists on the march], BBC Ukraine, 14 October 2016, http://www.bbc.com/ukrainian/politics/2016/10/161014_azov_conference_sx.
[182] Freedom House (2017), *Nations in Transit 2017: Ukraine*, https://freedomhouse.org/report/nations-transit/2017/ukraine.
[183] Velichko, L. (2016), 'Separatysts'kyy proekt Medvedchuka. Pid vyhlyadom "terytorial'nykh hromad" po vsiy Ukrayini stvoryuyut'sya "L-DNRy"' [Medvedchuk's separatist project. 'L-DNRi' are created under the guise of 'territorial communities' throughout Ukraine], Texty.org.ua, 5 July 2016, http://texty.org.ua/pg/article/txts/read/68839/Separatystskyj_projekt_Medvedchuka_Pid_vygladom_terytorialnyh_gromad.

In addition, regional differences in thinking about how Ukraine should develop, and ambivalence towards reform, continue to threaten policy progress. This is revealed in attitudes towards privatization, decentralization and land reform.[184] Weak public awareness of reforms, poor communication by the national government and an active Russian disinformation campaign are all aggravating these trends and nurturing a popular sense of disfranchisement. Only 5 per cent of Ukrainians believe government information to be of good quality and available in sufficient quantity.[185] The reporting of reforms by national and regional media is patchy, superficial and lacks 'human stories'.[186]

Steps to strengthen the impact of reforms

In the aftermath of the Euromaidan, the ruling elite felt highly accountable to civil society because the new government had been brought to power by social mobilization. This allowed civil society to exercise unprecedented leverage over the political process. Over time this link weakened and civil society became marginalized, with new legislative changes discriminating against anti-corruption CSOs. With less appetite for reform among the ruling class and in light of the above-mentioned risks, there is an increasingly urgent need for CSOs to broaden their social base. Prospects for a more inclusive approach are helped, at least, by the fact that Ukrainians are less fearful of speaking out than ever before, and more determined to participate in decision-making.

Organized civil society needs to work from the 'bottom up' so that citizens can better assess and provide feedback on policies

Several steps can be taken to build public pressure for reforms and empower citizens. First, CSOs should widen popular participation in reform by promoting existing methods of direct civic action, such as ProZorro, participatory budgeting, civic oversight mechanisms and self-organization. E-democracy and wider civic education could mobilize citizens who are currently focused on supporting and volunteering for the military sector. Western donors could aid this process by integrating requirements for wider civic participation into their grant-making. They should fund projects that build civic support networks and promote action-based rather than adversarial revolutionary activism. Donors have to ensure funds flow beyond Kyiv to Ukraine's regions. Regional CSOs need more assistance to build their confidence and capacity, especially in view of decentralization. The expansion of housing associations, farmers' unions, credit unions, community foundations, and teachers' and business associations would make decentralization of power more effective and local government accountable.

Second, building public trust is of critical importance. In part, civil society could do this 'from the top', by sustaining cooperation with reformers in legislative and executive offices. It could increase the credibility of reforms by endorsing them, and by participating in projects that modernize governance and social services or boost economic growth. However, most importantly, organized civil society needs to work from the 'bottom up' to create more safe, inclusive 'public spaces' for the discussion of reforms, so that citizens can better assess and provide feedback on policies. This would help CSOs – sometimes perceived as out of touch with the public – to respond better to citizens' concerns. It is already known that an overemphasis on top-down communica-

[184] Social Cohesion and Reconciliation (SCORE) Index, Executive Brief on Governance and Public Policy Reforms, 2016. For more on SCORE, see www.scoreforpeace.org.
[185] Ilko Kucheriv Democratic Initiatives Foundation (2016), 'Reformy v Ukrayini: hromads'ka dumka naselennya' [Reforms in Ukraine: public opinion], 11 July 2016, http://dif.org.ua/article/reformi-v-ukraini-gromadska-dumka-naselennya.
[186] Ukraine Crisis Media Center (2017), 'How the authorities, experts and media can jointly counter populism and profanation in communicating changes anticipated by Ukrainian citizens', https://app.luminpdf.com/viewer/fhCogMbLjmjoBTmBQ/share?sk=59517383-da2d-45f2-8d5c-4936a78dc561.

tion, in addition to the repeated flooding of the information space with facts, fails to produce desired outcomes for liberals and reform-minded groups globally.

Such stakeholder consultations could shape representative public opinion, which CSOs would then be well positioned to communicate to power-holders – thus increasing public pressure for reforms on particular issues. One example of stakeholder consultation that other CSOs could emulate is that adopted by the Centre UA in respect of electoral reform. After the Euromaidan, this experienced CSO reached out beyond Kyiv to hold multiple discussions in the regions of Ukraine on the strengths and weaknesses of the electoral system, and why electoral reform matters for further democratization. This enabled a consolidated public position on the direction of reform to develop, which was publicly presented in a paper known as the 'green book'.[187] Such forums or initiatives could provide an antidote to populism and disillusionment, and help to establish a larger and more active reformist political class in the future.

The third way in which CSOs and self-organized groups can strengthen the impact of reforms is by prioritizing more effectively, especially when it comes to advocacy campaigns at the national level. Civil society cannot fight too many battles at once. Ukraine's unreformed political system and shadow economy, and the prevalence of informal institutions, remain powerful impediments to clean and responsive government. By concentrating on a few key issues – such as the need for fair courts, electoral reform and professional public administration – CSOs could have a positive structural impact across other sectors. Local groups need to be better connected to national advocacy coalitions to be able to feed information back to Ukraine's regions. CSOs should engage more with political parties, especially the emerging ones, to ensure important issues enter the political debate and to narrow the disconnect between politics and citizens.

Finally, better interaction between CSOs and the commercial sector could help to identify innovative technological solutions for effective governance. The success of ProZorro has already demonstrated that partnership between business, the state and civil society can produce rapid structural change. The private sector – especially small and medium-sized enterprises and the technology industry – often shares the same aspirations for accountability as the non-profit sector. Given the low trust in official channels, partnerships between CSOs and private business could help reinforce social innovation in order to develop effective solutions to Ukraine's myriad social and economic problems.

[187] Tsentr UA (2016), *Zelena Kniga* [Green Book], http://centreua.org/wp-content/uploads/2016/05/Equal-Access-to-Politics-Green-Paper.pdf.

7. Anti-corruption Reforms

John Lough

Since 2014, Ukraine has made remarkable progress in laying the foundations for reducing corruption in public life. Corruption in Ukraine is long established and deeply rooted. It remains the single biggest obstacle to successful development, creating economic inefficiencies and deterring investment.[188] The achievements of the past three years are welcome, but to build on them and make reforms irreversible will require a further step: renewal of Ukraine's judiciary, an institution itself riddled with graft and a pillar of the systemic corruption that has plagued the country since independence. Without a breakthrough in this area, there is a danger that the anti-corruption effort will lose momentum, leaving in place substantial elements of the 'old' system through which the elites have diverted much of Ukraine's national wealth for their own purposes.

Recent reforms have significantly improved transparency, and have included the establishment of new agencies for investigating and prosecuting high-level officials suspected of corruption

For the purposes of this analysis, corruption is defined here as the misuse of public institutions and office to the detriment of the common good. It does not necessarily involve financial wrongdoing, but can involve this.

In contrast to previous anti-corruption efforts, notably after the Orange Revolution of 2004–05, recent reforms have moved beyond rhetoric: they have significantly improved transparency, have begun to restrict the scope for corrupt practices to occur, and have included the establishment of new agencies for investigating and prosecuting high-level officials suspected of corruption. Since mid-2016, stalwarts of Ukraine's 'old' system have increased their resistance to these measures – a sure sign that the policies are well targeted. Taken together, the anti-corruption reforms effected so far mark an encouraging start to the process of equipping Ukraine with the institutions and culture needed to discourage corrupt behaviour in government, business and wider society.

These positive changes have been bolstered by reforms in other areas. For obvious reasons of national defence, Ukraine's national oil and gas company, Naftogaz, has stopped importing Russian natural gas – thus suspending a trade that was the single biggest source of corruption in the economy. Whether through direct gas purchases or non-transparent intermediaries, Naftogaz was at the centre of a pernicious web of corrupt practices that widely permeated the economy and political life.[189] On a smaller but still significant scale, changes to the procurement system at the Ministry of Health have begun to address long-standing corruption within the state system. 'E-government' initiatives encompassing state procurement tenders, business registration and value-added tax (VAT) registration – as well as automatic VAT reimbursement – have sharply reduced direct contact between officials and businesses, in turn limiting opportunities for abuse of the system.

Banking reform, meanwhile, has led to the closure of nearly half of the country's 180-plus banks and the nationalization of PrivatBank, the country's largest bank (accounting for 37 per cent of retail deposits and one-fifth of all banking assets as of December 2016). In many cases, banks were used to divert money from the state through loans never intended for repayment. Seventy per cent of PrivatBank's loans were to companies belonging to its two owners.[190] At the same time, the concentration

[188] See IMF (2017), *Ukraine: Selected Issues*, Country Report No. 17/84, April 2017, https://www.imf.org/en/Publications/CR/Issues/2017/04/04/Ukraine-Selected-Issues-44799. The authors note: 'Corruption appears to be widespread throughout most of the country, being particularly severe in Kyiv. Firms located in the West seem instead to face lower corruption levels, even though 65.8 percent of them still consider corruption as a major constraint for business.'
[189] Kobolyev, A. (2015), Naftogaz CEO Statement, http://www.naftogaz.com/www/3/nakweben.nsf/0/73D1AED5C31D4608C2257F3800310E97?OpenDocument&Expand=1&.
[190] Åslund, A. (2016), 'Ukraine Nationalizes its Biggest Bank. Here's Why This Is a Good Thing', Atlantic Council, 19 December 2016, http://www.atlanticcouncil.org/blogs/ukrainealert/ukraine-nationalizes-its-biggest-bank-here-s-why-this-is-a-good-thing.

of wealth in the hands of a cohort of powerful businessmen is believed to have significantly declined, reducing their ability to exercise political influence. For example, Rinat Akhmetov, one of Ukraine's leading businessmen prior to 2014, has lost control of substantial assets in the occupied territories of Crimea and Donbas.

From the viewpoint of Ukraine's justifiably impatient population, there is so far little to show for anti-corruption reforms

Despite these achievements, from the viewpoint of Ukraine's justifiably impatient population, there is so far little to show for the reforms. The Euromaidan movement's demands that the authorities curb corruption and put high-level *korruptsioneri* behind bars remain unfulfilled. There have been no convictions of senior officials from the administration of former president Viktor Yanukovych, despite overwhelming evidence that many oversaw the theft of public assets on an epic scale. Nor have there been any convictions for the Maidan shootings that killed more than 75 protesters and police. Key suspects from the 'Berkut' elite security force have escaped to Russia. Justice has still not caught up with members of the armed forces and security services suspected of serving Russia rather than Ukraine before 2014. With the notable exception of Naftogaz, state-owned enterprises (SOEs) continue to bleed the equivalent of billions of dollars annually from the state budget through corrupt schemes.

In some areas, new problems have appeared: for example, in 2016, the state energy regulator set wholesale electricity prices at levels favouring domestic coal producers, in effect allowing them to receive a surcharge for their production as if they had transported it from the Netherlands (i.e. using the 'Rotterdam +' formula) – even though their coal is mined in Ukraine. The new anti-corruption agency is investigating possible abuses of power by officials at the regulator. At the same time, defence spending remains highly opaque, prompting speculation that the conflict in Donbas is justifying high levels of secrecy that benefit politically connected defence companies.[191]

These shortcomings and the lukewarm support among the ruling elites for serious anti-corruption measures reinforce the widely held view in Ukrainian society that corruption levels remain as high as they were before the Euromaidan revolution and will not change. Consistent with this is Transparency International's ranking of Ukraine in joint 131st place, out of 176 countries surveyed, in its 2016 Corruption Perceptions Index[192] – this was down one place from 130th in 2015, and also roughly in line with the results during the Yanukovych years.

However, a degree of realism must accompany these assessments. Expectations of a rapid and genuine breakthrough in the fight against corruption in Ukraine were always destined to be disappointed, given entrenched cultural and structural factors.

The cultural dimension includes the widely engrained and still visible practice, inherited from the Soviet era, of petty bribery (*blat*) dressed up as 'thank you' payments to doctors, teachers, local officials and the like, as well as the widespread theft of public property. In Ukraine, as elsewhere in the former USSR in the 1990s, the breakdown of public services and chronic wage arrears encouraged bribery, theft and an active shadow economy. The legacy of this is a view in society, persistent to this day, that everyone engages in some form of corruption and that it is simply a way of life.

Ukraine has also inherited a structural corruption problem, the origins of which lie in the fire-sale privatizations that started in the mid-1990s and created a set of disproportionately wealthy business owners. To protect their interests, these *arrivistes*

[191] Ponomarenko, W. (2017), 'Secrecy Blankets Corruption In Ukraine's Defense Sector', *Kyiv Post*, 15 September 2017, https://www.kyivpost.com/ukraine-politics/secrecy-blankets-corruption-ukraines-defense-sector.html.
[192] Transparency International (2017), 'Corruption Perceptions Index 2016', 25 January 2017, https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table.

often brought their influence directly into government, parliament, the media and the judiciary. They quickly established networks that instrumentalized public institutions to work on their behalf rather than for the country itself. Their associates bought their way on to parliamentary lists, both to secure immunity from prosecution and to continue to enrich themselves through privileged access to state resources.

To a greater or lesser degree, this usurpation of power or 'state capture' has affected the majority of countries transitioning from the Soviet command-administrative system to market-based economic models. However, Ukraine has been a 'high-capture' state in the sense that its size and regional diversity spawned a wide range of interest groups in competition with each other for influence over state enterprises and budgets.

This has placed a considerable brake on Ukraine's development. As the economists Joel Hellman and Daniel Kaufmann have noted, 'state capture' is a form of grand corruption that weakens the state and undermines its ability to provide basic public goods.[193] The enfeebling of the state in turn limits the development of politically unconnected businesses, particularly small and medium-sized enterprises (SMEs), because of the difficulties they face in upholding property rights or enforcing legal claims. It is also a powerful disincentive for businesses to invest because of the heightened risk premium associated with politically subservient courts and a generally unpredictable legal environment. In other words, state capture benefits those who do the capturing but distorts the economy as a whole and impairs national development. Ukraine provides a perfect case study of these problems. Corruption on a grand scale has not only cost the country's citizens dearly over more than 20 years, but has cemented in place a system that is impossible to dislodge without deep changes to the operating environment.

Ukraine suffers from an inherited Soviet-era legal system and law enforcement structures that were originally designed to uphold the authority of the government rather than the rule of law

Ukraine also suffers from a problem common in transition countries that have inherited Soviet-era legal systems and law enforcement structures originally designed to uphold the authority of the government rather than the rule of law. In most such countries, these structures have proved highly resistant to change. In Ukraine's case, the judiciary is accustomed to being politically dependent and the Prosecutor General's Office (PGO) to having levels of influence not associated with a prosecutorial service in a developed democracy. In a system of this kind, the PGO can easily become a tool used for selective application of the law.[194]

These factors, taken together, explain how the 'old' system in Ukraine has proved so resilient, and how it continues to resist the introduction of foreign concepts associated with preventing corruption and investigating misconduct. The Euromaidan removed Yanukovych and his associates from power and put an end to their attempts to centralize control of the country's assets, but it did not break the underlying system. Instead, elements of Ukraine's 'deep state' have regrouped with the clear goal of blocking or diluting reforms that threaten their interests. President Petro Poroshenko's lack of commitment to establishing an independent judiciary and overhauling the PGO – even though it is his responsibility to oversee reforms in both institutions – offers a striking example of the difficulties of anti-corruption reforms.

Anti-corruption policy is thus a battleground pitting, broadly speaking, 'reformist' forces against the inherited system. The real impetus for anti-corruption reforms has

[193] Hellman, J. and Kaufmann, D. (2001), 'Confronting the Challenge of State Capture in Transition Economies', *Finance & Development*, 38:3.
[194] For a discussion of the historical roots of the PGO in Ukraine and its relationship to the president, see Pomeranz, W. and Nesterenko, O. (2016), 'Breaking the Ukrainian Procuracy', Wilson Center Kennan Institute, Kennan Cable No. 14, January 2016, https://www.wilsoncenter.org/sites/default/files/kennan_cable_no.14_breaking_the_ukrainian_procuracy.pdf.

come not from the government but from a small group of progressive government officials and members of parliament (MPs), and from an emboldened set of civil society organizations (CSOs) that carry the moral banner of the Euromaidan. Backed by the strong desire among Ukrainians for action to rein in high-level corruption, and supported by assistance from Western governments, CSOs were the driving force behind the 2014 anti-corruption law and its implementation. This move created two new agencies and featured an unprecedented effort to improve transparency and change cultural attitudes towards corruption in public service.

At the same time, representatives of the 'old' system in the government – including the security service, parliament, the PGO and the judiciary – have been fighting hard to limit the scope of these measures. Allied with elements of big business, these groups remain a powerful force with potentially much to lose and significant capacity to hinder anti-corruption reforms.

Anti-corruption efforts: the starting point

To assess Ukraine's progress in tackling corruption over the past three-and-a-half years, it is important to consider the starting point for reforms. Society in Ukraine became angry at the excessive self-enrichment of Yanukovych and his associates after the presidential election in 2010, and demanded justice for the perpetrators and action to limit corruption. Paradoxically, sociological research since the Euromaidan has shown continued high acceptance of corruption in daily life, and a willingness to engage in such practices to solve problems.[195] According to the research data, over 65 per cent of Ukrainians across all age groups believe that corruption is a fundamental part of the Ukrainian mentality.[196]

A further problem – given the wide extent of corruption in the police, the healthcare system and the education sector, where salaries are very low – is that the number of beneficiaries of illegal *blat* payments remains very large. In many cases, this extra cash is vital for supporting families and extended communities. The result is that there is little appetite in these parts of society for a war on petty corruption. The expectation instead is that the state should stamp out excessive high-level corruption. For Ukraine's reformers, this poses a dilemma: tackling low-level corruption is easier than trying to eradicate high-level graft,[197] yet this risks being socially disruptive if not accompanied by salary increases for poorly paid public-sector workers. At the same time, the lack of progress in addressing entrenched high-level corruption increases social discontent and support for populist forces.

A Ukrainian government diagnostic study of high-level corruption, prepared with the assistance of the IMF in 2014, put in sharp relief the problems for Ukraine's reformers. It noted the 'pyramidal' nature of state capture permeating the government system, featuring 'powerful well-known elites at the top, heads of agencies in the middle and agency staff at the base'.[198] The report described how these groups were able to control

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[195] In a 2015 survey, 49.8 per cent of the adult population admitted that they might become involved in corrupt activity if they saw benefit in doing so, while only 37.4 per cent said this was unacceptable. Kyiv International Institute of Sociology (2016), *Corruption in Ukraine: Comparative Analysis of National Surveys: 2007, 2009, 2011, and 2015*, Kyiv: Kyiv International Institute of Sociology, http://kiis.com.ua/materials/pr/20161602_corruption/Corruption%20in%20Ukraine%202015%20ENG.pdf.
[196] Ibid.
[197] The establishment of the new patrol police demonstrates this. This part of the police force is generally viewed as not being corrupt.
[198] Government of Ukraine (2014), *Government of Ukraine Report on Diagnostic Study of Governance Issues Pertaining to Corruption, the Business Climate and the Effectiveness of the Judiciary*, 11 July 2014, p. 4, https://www.imf.org/external/pubs/ft/scr/2014/cr14263-a.pdf.

appointments in the public sector, ensure the application of regulations in line with their interests, and restrict public access to information.[199]

Analysing the structure of corruption, the study also noted 'a strong view that corrupt public officials often work in concert across public agencies to intimidate, harass to conduct corporate raiding and to extract bribes'. Among the agencies perceived as most corrupt, it singled out the tax administration, the police, the PGO, the State Enforcement Service and the judiciary. Among the courts, it identified the commercial courts as the worst offenders.[200]

It is clear that the fusion of money and power since independence in 1991 transformed the role of Ukraine's law enforcement institutions, so that their original task of protecting the Soviet system from within became one of supporting criminal activity by the new economic and political elites. Organized crime became synonymous with the functioning of the state.

This pattern extended into the judiciary, as external influence over the appointment of judges became prevalent. In some cases, positions were offered for sale by those involved in state capture. Representatives of such interest groups also sold prosecutorial appointments and other roles in the state system.

Although other transition countries in the region have encountered similar problems, there is no precedent for managing them in a country as large as Ukraine. At regional level, organized crime is deeply enmeshed with political and business interests, encouraging politicians and businesspeople to buy influence in Kyiv that can help them to assert control locally. A regional prosecutor – through close cooperation with the chairman of the regional court and the chief of regional police – is often the real source of power at regional level, rather than the regional governor.

As in other former Soviet states, over-regulation offers government officials rich opportunities for predatory behaviour. Business licensing requirements, for example, are often excessively onerous; enforcement is selective because no company can meet all the requirements. This ensures that an official can invariably find a reason to spot a regulatory violation and impose a fine or order an investigation. Small businesses have long suffered an endless procession of visits by officials, from sanitary inspectors to agents from the tax police, seeking to extort money. In the absence of a judicial system in which they can defend their rights, there is little they can do to prevent such abuses.[201]

Results achieved

Increased transparency

The adoption by the Verkhovna Rada of the Anti-Corruption Strategy for 2014–17 in October 2014 marked a breakthrough in efforts to address corruption. Heavily influenced by civil society and Georgian reformers[202] recruited into government, the document outlined an approach for preventing corruption in several areas, including the public sector, public procurement and the judiciary. It placed heavy emphasis on

[199] Ibid., p. 4.
[200] Ibid., p. 10.
[201] Prime Minister Volodymyr Groysman has said that the government has cancelled more than 3,000 regulations 'which were the basis of corruption and pressure upon businesses'. See Olearchyk, R. (2017), 'Ukraine seeks billion dollar investments to fuel fragile economy', *Financial Times*, 8 May 2017, https://www.ft.com/content/e9833cd2-07e8-11e7-ac5a-903b21361b43.
[202] Georgian officials had implemented anti-corruption reforms in Georgia after the 2004 'Rose Revolution', achieving impressive results.

raising transparency in government and developing new law enforcement institutions. However, the strategy has faced criticism for its lack of clear performance indicators or coordination with reforms in areas such as healthcare and decentralization.[203]

A battle for control of the new body responsible for developing and managing anti-corruption programmes, the National Agency for Prevention of Corruption (NAPC), established a pattern of contest over the pace and depth of the reforms – involving, on the one hand, the government and parliament and, on the other, reformers, CSOs and international donors. The NAPC is effectively a branch of government that reports to the Cabinet of Ministers.

As a tool for exposing enrichment among officials, Ukraine's e-declaration system is without parallel in the countries of the former Soviet Union

After considerable foot-dragging and signs of political interference, the NAPC in September 2016 launched an 'e-declaration' system for the assets of public-sector officials. The system initially required 100,000 senior officials in government, including the president and prime minister, to disclose their income and assets and those of their family members. The results generated outrage among the public. The level of cash holdings of officials surpassed all expectations, totalling UAH 26 billion (around $946 million).[204] Based on the declarations, the news agency Reuters estimated that 24 members of the cabinet held nearly $7 million just in cash.[205] Prime Minister Volodymyr Groysman declared $1.2 million and €460,000 in cash, as well as a collection of luxury watches.[206] The head of the tax service, Roman Nasirov, reported that he held $2 million in cash. Around 30 judges with annual salaries ranging from $10,000 to $13,000 owned Porsches, and many declared large cash deposits.[207]

As a tool for exposing enrichment among officials, Ukraine's e-declaration system is without parallel in the countries of the former Soviet Union. Those required to fill out e-declarations must also register within 10 days any income or acquisition of property of a value in excess of 50 months' wages (UAH 80,000 as of 1 January 2017). In the view of the UN Development Programme, which provided technical and financial support, the new e-system is far from perfect but represents a major improvement on previous paper versions.[208]

To little surprise, attempts to roll back the scale of the system came quickly: in November 2016, a caucus of 48 MPs filed a claim with the Constitutional Court arguing that compelling officials to publicize details about the assets of family members was unconstitutional.[209] The resistance continued in March 2017 when President Poroshenko signed into law controversial requirements for anti-corruption

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[203] Marusov, A. (2017), *Anti-corruption Policy of Ukraine: First Successes and Growing Resistance*, Kyiv: Reanimation Package of Reforms, p. 3, http://rpr.org.ua/wp-content/uploads/2017/02/Renaissance_A4_4Anti-Corruption-Policy.pdf.
[204] Using an exchange rate of UAH 1: $0.0364 on 9 August 2017. Reuters (2017), 'Currency Calculator', http://uk.reuters.com/business/currencies (accessed 9 Aug. 2017).
[205] Prentice, A. (2016), 'Ukrainians shocked as politicians declare vast wealth', Reuters, 31 October 2016, http://www.reuters.com/article/us-ukraine-crisis-corruption-idUSKBN12V1EN. There are strong suspicions that some members of the elite may have overstated their cash holdings in order to disguise later enrichment. The figures may also be further evidence of the size of the 'shadow' economy.
[206] Walker, S. (2016), 'Ukraine stunned as vast cash reserves of political elite are made public', *Guardian*, 31 October 2016, https://www.theguardian.com/world/2016/oct/31/ukraine-stunned-vast-cash-reserves-political-elite-made-public.
[207] Zinets, N. (2017), 'Fighting corruption, Ukraine starts to judge its judges', Reuters, 25 May 2017, http://www.reuters.com/article/us-ukraine-corruption-insight/fighting-corruption-ukraine-starts-to-judge-its-judges-idUSKBN18L0HC.
[208] Brand, M. (2016), 'An effective e-declaration system will be a watershed for the country', United Nations Development Programme, 20 October 2016, http://www.ua.undp.org/content/ukraine/en/home/ourperspective/ourperspectivearticles/2016/10/20/what-s-wrong-with-the-e-declaration-.html.
[209] The e-declaration system required the disclosure of assets held by family members because of the practice on the part of state officials of distributing assets among family as a means to disguise ownership and, ultimately, to protect them. However, the definition of family does not apply to relatives (excluding spouses) who live apart from other members and who do not have a joint household. Kotlyar, D. (2017), 'Druha khvylya. FAQ dlya novykh e-deklarantiv: shcho i yak deklaruvaty?'[The second wave. FAQ for new e-declarants: what and how to declare?], *Ukrainska Pravda*, 31 January 2017, http://www.pravda.com.ua/articles/2017/01/31/7133648/.

campaigning organizations themselves to submit e-declarations. This fightback suggests that parts of the Ukraine elite are deeply uncomfortable with the new system of asset disclosures, viewing it as a measure that they can neither ignore nor respond to dishonestly. To this extent, anti-corruption reformers have scored a significant victory. On the other hand, anecdotal evidence indicates that even some officials supportive of the anti-corruption effort think the e-declaration system too intrusive, and thus counterproductive for efforts to elicit cooperation from public officials.

Despite the initial success of the e-declarations, the NAPC was heavily criticized by civil society and international donors for attempting to delay the process and prevent the timely checking of data, needed for potential criminal investigations by the newly formed agency for investigating high-level official corruption, the National Anti-Corruption Bureau of Ukraine (NABU). There are strong indications that the NAPC's work is vulnerable to interference from lobbies in government and parliament that wish to restrict its activities. There is little doubt that the e-declaration system would have remained on the drawing board for much longer had it not been for pressure from the EU and others. The NAPC has also attracted ridicule for its attempts to investigate suspicions of fraud on apparently trivial grounds against individuals such as Serhiy Leshchenko, an MP and prominent anti-corruption campaigner, and Yulia Marushevska, the former head of Odesa Region Customs. The latter faced investigation over a bonus equivalent to $18 that she had allegedly awarded herself.

Within two months of the filing of the e-declarations, the NABU had started 13 criminal investigations into the financial affairs of MPs, judges and prosecutors.[210] A further 2 million officials filed e-declarations in the spring of 2017. While the scale of the effort is laudable, it is not clear how the Ukrainian authorities will be able to screen, let alone act on, such a vast volume of information. Nonetheless, the process marks a turning point in terms of increasing accountability and establishing a culture of openness from which officials cannot hide.

The widely praised ProZorro platform has placed government tendering online, ending the old practice of rigged auctions

Achievements in raising transparency have been notable in four further areas. The first is public procurement. The widely praised ProZorro platform (see Chapter 6, in particular) has placed government tendering online, ending the old practice of rigged auctions. Prime Minister Groysman has estimated that in 2016 the system saved the state budget UAH 8 billion.[211]

The second is a new law on the financing of political parties, which came into effect in 2016. It requires parties to disclose their revenue sources and file quarterly reports, which should be publicly available. The law also provides for public financing of political parties, in an effort to limit the influence of business groups that might seek influence through representation in parliament.

Third, the law 'On Open Use of Public Funds', adopted in February 2015, requires all government bodies, including SOEs, to publish online their budgets and details of their spending. Although only 20 per cent of eligible organizations had published the required information by the end of 2016,[212] the law marks a significant step towards public oversight of government spending. It also lends itself to integration with the wider decentralization reforms seeking to bring decision-making in government

[210] Reanimation Package of Reforms (2017), *Richnyy zvit 2016* [Annual report 2016], Kyiv: RPR, p. 2, http://rpr.org.ua/richni-zvity/.
[211] Post, C. (2016), 'Groysman: About Hr 8 billion of state budget saved in 2016 due to ProZorro', *Kyiv Post*, 26 December 2016, https://www.kyivpost.com/ukraine-politics/groysman-hr-8-billion-state-budget-saved-2016-due-prozorro.html.
[212] Cited in Marusov (2017), *Anti-corruption Policy of Ukraine: First Successes and Growing Resistance*, p. 10.

closer to citizens. However, large numbers of SOEs argue that they are not obliged to report to the public, and in any case the fines for non-compliance are tiny.

The fourth achievement is a law on public information in open data formats, which obliges all government organizations to make their datasets available on the government's web portal. Ukraine also requires all legal entities to disclose their beneficial ownership in the government business registry.[213]

New law enforcement bodies

Civil society and foreign donors strongly backed the creation of the NABU and the Specialized Anti-Corruption Prosecutor's Office (SAPO), an independent entity within the PGO. Formed in 2015 with staff appointed in an openly competitive process – and paid significantly more than the average government wage for their positions – the two new structures represent an effort to establish 'clean' agencies that can investigate and prosecute high-level corruption without political interference. In September 2016, Nazar Kholodnitsky, the SAPO's prosecutor, announced that his office was indicting an average of four top officials a month. However, he did not mention any successful convictions.[214] The SAPO's independence is open to question given the widely held view in Ukraine that the top leadership only pays lip service to fighting corruption and is prepared to sabotage investigations where necessary. Kholodnitsky reports to the prosecutor general, although the SAPO is housed in a separate building.

The NABU reported in September 2017 that it had 398 cases under investigation, involving the loss of UAH 87 billion in state funds and resulting in 131 indictments. There are signs that the NABU has started with cases involving suspects at lower levels of seniority, but that it is extending its investigations to those at higher levels. The arrest of the head of the tax service in March 2017 marked a watershed (he has denied the allegations against him, which he complains are politically motivated, and has been released on bail). This was followed shortly afterwards by the arrest and subsequent release (without bail) of Mykola Martynenko, reportedly the main sponsor of one of the ruling coalition parties, who remains under investigation.[215] The NABU had not previously acted against an individual of ministerial level.

The NABU also reported in September 2017 that of the 86 cases sent to the courts by the SAPO, only 17 had resulted in convictions. One-third of its cases were still waiting to be heard.[216]

Not surprisingly, the agency has come in for criticism for failing to produce faster results, and there have been orchestrated attacks on its reputation and the leadership of its director, Artem Sytnyk. However, foreign donors' commitment to the NABU's success has helped it to withstand attacks by detractors who appear to have much to lose from its power to investigate. It has also, at times, found itself in a turf war with the PGO and the Security Service of Ukraine (SBU). Reliance on the SBU for

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[213] Reanimation Package of Reforms (2017), *Richnyy zvit 2016*, p. 10.
[214] Kholodnitsky, N. (2016), presentation at 24th OSCE Economic and Environmental Forum, Prague, 24–26 September 2016, http://www.osce.org/secretariat/264656.
[215] See, for example, Hromadske international (2017), 'New Arrest Exposes Ukrainian Money Laundering in Western Europe', 23 April 2017, https://en.hromadske.ua/posts/new-arrest-exposes-ukrainian-money-laundering-in-western-europe?src=ilaw; and Kruk. K. (2017), 'KRUK REPORT: Ukraine's anti-corruption agency shows its teeth with new detentions', bne IntelliNews, 21 April 2017, http://www.intellinews.com/kruk-report-ukraine-s-anti-corruption-agency-shows-its-teeth-with-new-detentions-120028/. Martynenko has denied the allegations.
[216] NABU press statement, 11 September 2017, https://nabu.gov.ua/en/novyny/26-out-86-nabus-proceedings-trials-have-not-started-yet.

Box 3: Ukraine's new anti-corruption agencies

Three new bodies were established in 2015–16 to implement state anti-corruption policy:

National Agency for Prevention of Corruption (NAPC)
The NAPC is responsible for developing and implementing the anti-corruption strategy. One of its main tasks is verifying the asset declarations of state and local government officials. It is also responsible for enforcing rules on political party financing, including the use of state-allocated support that is provided to political parties.

National Anti-Corruption Bureau of Ukraine (NABU)
The NABU is responsible for investigating corruption committed by senior officials, members of parliament, judges and managers of large state-owned enterprises. It operates independently of the Prosecutor General's Office (PGO). The NABU's director was selected in an open competition with the involvement of civil society. With the exception of its first deputy and deputy directors, all NABU positions are filled by open competition.

Specialized Anti-Corruption Prosecutor's Office (SAPO)
The SAPO is an independent sub-division of the PGO. The SAPO oversees the NABU's investigations to ensure that they are legally compliant, and determines whether there is sufficient evidence for the state to prosecute. All SAPO prosecutors' appointments are made by open competition.

wire-tapping during investigations is widely seen as a factor seriously inhibiting the agency's effectiveness, because of the danger that information about surveillance targets will be leaked.

At the time of writing, two other new anti-corruption institutions are in the process of being established. One is the State Bureau of Investigation (SBI), which will assume most of the PGO's investigative functions for serious crimes, including corruption, but with the NABU's role preserved for investigating corruption by high-level officials.[217] The SBI will also be responsible for investigating crimes committed by SAPO and NABU representatives, as well as military crimes. The other new institution is the Asset Management and Recovery Office (AMRO), tasked with managing seized property and tracing assets acquired by corrupt means, including those laundered abroad. Both are due to become operational before the end of 2017. A dispute about the selection procedure for the SBI has delayed its formation. The proposed selection panel was drawn heavily from interests connected with the two main parties in the ruling coalition, and did not include any CSO representatives.[218]

The framework law 'On Judiciary and Status of Judges', passed in June 2016, foresees the establishment of a third institution: a High Anti-Corruption Court. However, the court's formation awaits the enactment of an additional specialized law, albeit without a deadline. Civil society groups are pushing hard for the establishment of this new court, which is expected to have national jurisdiction to try cases brought by the NABU. A key requirement is that it should have impartial judges free from political interference.

[217] Mission of Ukraine to the North Atlantic Treaty Organization (2016), 'Government sets up the State Bureau of Investigation', 29 February 2016, http://nato.mfa.gov.ua/en/press-center/news-from-ukraine/1246-uryad-stvoriv-derzhavne-byuro-rozsliduvany.
[218] The lack of CSO oversight of appointments to the NAPC is viewed by reformers as the main reason for its institutional weakness.

Setbacks have continued, however. In 2016, it became clear that first-instance courts were blocking efforts to address high-level corruption, and that the delays risked undermining the credibility of the NABU and the SAPO.[219] As Mykhailo Zhernakov, one of Ukraine's top specialists on judicial reform, has noted, the new framework law provides for a first-instance anti-corruption court but not a special anti-corruption court of appeal. This raises serious questions about how to prevent appeals against decisions in the new court passing back into the regular – and, so far, unreformed – court system. One option, as Zhernakov argues, is to create an anti-corruption panel in the new Supreme Court as the second-instance court for high-level corruption cases.[220]

In July 2017, the EU appeared to accept the arguments of opponents of a separate anti-corruption court. The president of the European Commission, Jean-Claude Juncker, stated during a visit to Kyiv that the establishment of an anti-corruption chamber within the existing judicial system would be sufficient. The NABU and anti-corruption NGOs contest this view.[221] However, in a surprise move in early October 2017, President Poroshenko indicated that Ukraine would establish a separate anti-corruption court but with an appellate chamber within the new Supreme Court. The announcement came a day before the Council of Europe's Venice Commission called on Poroshenko to submit a draft law on the establishment of a high specialized anti-corruption court with judges selected by an open procedure with international involvement.

The next challenge: judicial reform

Since 2014, the pace of anti-corruption reform has substantially outstripped that of judicial reform. The continued slow progress in establishing competently staffed courts free from interference threatens to undermine the entire anti-corruption effort.

A 2017 poll of public attitudes towards Ukraine's institutions indicated that fewer than 6 per cent of respondents had any trust in the courts

In the World Justice Project's Rule of Law Index 2016, Ukraine ranked 78th out of 113 countries for adherence to the rule of law.[222] In the same year, it ranked 99th out of 105 countries for judicial independence in the Index of Public Integrity, an EU-supported project.[223] A 2017 poll of public attitudes towards Ukraine's institutions indicated that fewer than 6 per cent of respondents had any trust in the courts.[224] In the autumn of 2014, a Judicial Reform Council was established as a consultative body reporting to the president. Judicial reform began with a presidential decree in 2015, and in June 2016 the Verkhovna Rada adopted important constitutional amendments concerning the judiciary and the professionalization of judges. However, the overall process of renewal was put in the hands of the judiciary itself, to little effect. Judges' salaries are being raised significantly, although not all legal experts in Ukraine believe low salaries to be the reason for corruption. At the same time, their immunity from prosecution, which used to be unconditional, is now only partial. A new law has established a High Council of Justice. To limit political influence, the law provides

[219] Zhernakov, M. (2016), 'Independent Anti-Corruption Courts in Ukraine: The Missing Link in Anti-Corruption Chain', Kyiv: Reanimation Package of Reforms, December 2016, p. 2, http://rpr.org.ua/wp-content/uploads/2017/02/Renaissance_A4_3ANTI-CORRUPTION-COURTS-.pdf.
[220] Ibid., p. 4.
[221] UNIAN Information Agency (2017), 'EU clarifies Juncker's position on anti-corruption court in Ukraine', 14 July 2017, https://www.unian.info/politics/2030349-eu-clarifies-junckers-position-on-anti-corruption-court-in-ukraine.html.
[222] World Justice Project (2016), *World Justice Project Rule of Law Index 2016*, Washington, DC, https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index%C2%AE-2016-report.
[223] European Research Centre for Anti-Corruption and State-Building (2016), 'Index of Public Integrity', http://integrity-index.org/. See also Zhernakov, M. (2016), 'Judicial Reform in Ukraine: Mission Possible', Kyiv: Reanimation Package of Reforms, December 2016, http://rpr.org.ua/wp-content/uploads/2017/02/Renaissance_A4_5JURIDICIAL-REFORM.pdf.
[224] Sofia Centre for Social Research (2017), 'Crisis of Trust in Power', June 2017 http://sofia.com.ua/page226.html.

for the Ukrainian president to appoint senior judges on the recommendation of the council, but does not give him or her the right to reject its nominees. Only the council can dismiss judges. Senior judges will be appointed for an initial term of five years. After this, they must submit to a re-attestation of their qualifications and integrity; only based on this result can they then be appointed for an indefinite term. However, many apparently corrupt judges have been reappointed. Moreover, the change in the law resulted in many court presidents being re-elected for a third or even fourth time, despite the prohibition on their holding office for more than two consecutive terms. Meanwhile, more than 2,000 judges have retired early, many of them potentially in order to avoid submitting online wealth declarations.

An entirely new Supreme Court is being set up. It will replace three specialized courts and the current Supreme Court, and will thus reduce four levels of justice to three. Obtaining a final judgment in a case should become quicker as a result. In 2016–17, under the auspices of the High Qualification Commission of Judges (HQCJ), over 1,400 applicants competed for selection on to a shortlist of 120 candidates to fill at least 65 Supreme Court positions. The candidates were screened by the Public Integrity Council (PIC), which includes members of authoritative CSOs. Although parts of the process were remarkably transparent, others were less so. It is hardly encouraging that numerous sitting judges failed the multiple-choice examination set, even though the questions were published in advance. Anti-corruption activists reported in July that over 70 per cent of the PIC's recommendations had been ignored. However, the HQCJ later said that 80 per cent of those who received negative assessments from the PIC did not make it to the final stage (the High Council of Justice nominated 111 candidates for appointment to the Supreme Court on 29 September 2017 – 25 of the appointees had been rejected by the PIC). The lower tiers of judges will have to take similar tests as part of their re-attestation. It is estimated that the re-attestation of appeal judges, with whom many cases will end up, could take three years.

The likelihood remains that, at best, Ukraine will create a more efficient Supreme Court, but one only marginally less politically dependent than its predecessor

No country has embarked on a judicial renewal process on this scale, and with sustained political will on the part of the authorities and foreign donors, backed by continued pressure from civil society, it should be possible to make progress. However, resistance from vested interests remains strong, and the likelihood remains that, at best, Ukraine will create a more efficient Supreme Court, but one only marginally less politically dependent than its predecessor. Ukraine's challenge is to develop a new generation of judges with a culture of independence and objectivity. Inevitably, this will be a long-term project.

In the PGO, reform is also progressing slowly, with a new cadre of prosecutors needed. In 2015, more than 3,330 external candidates applied for 155 positions as heads of local courts. Not one was successful.[225] The institution is widely regarded as the last bastion of vested interests, and it is significant that the president nominates the candidate for prosecutor general.[226] In a first step, the PGO has established an Inspectorate General, whose head was appointed with input from civil society, to start weeding out corrupt officials within its own ranks. However, the PGO remains a largely unreformed institution and has retained wide-ranging powers, inherited from Soviet days, of both investigation and procedural oversight of cases. These powers make it easier to bring cases to court because the organization deciding whether there is a realistic prospect

[225] Press statement by the Prosecutor General's Office, 5 May 2016, http://en.gp.gov.ua/ua/statref.html?_m=publications&_t=rec&id=183269.
[226] President Poroshenko was able to appoint Yuriy Lutsenko as prosecutor general only after parliament cancelled the requirement for the holder of the position to have a legal education and 10 years' professional experience in the PGO.

of conviction is the same one carrying out the investigation. The ability to politicize an investigation and then pass it to a compliant judiciary is a recipe for embedding the corrupt practices of those in power. While the investigative functions of the PGO are due to pass to the new SBI, there are signs that the PGO's protectors in government and parliament wish to slow down the process.

Conclusions

Under internal and external pressure – mainly from reformist forces in civil society and parliament on the one hand, and from the EU and IMF on the other – Ukraine has taken its first serious steps since independence to address high-level corruption. These achievements are considerable, indeed remarkable, by the standards of reforms over the 20-odd years before the Euromaidan. However, they are far from sufficient to anchor in place over the long term the institutions and practices required to reduce corruption significantly.

To make further progress, Ukraine must demonstrate results by ensuring the convictions of high-level figures previously regarded as untouchable. It must develop as its top priority an independent judiciary. The establishment of anti-corruption courts, or an anti-corruption chamber, staffed with judges who have undergone a rigorous selection process (also involving CSOs and foreign specialists) would provide a way to achieve rapid results, and could serve as a prototype that reformers could replicate and extend across the judicial system. Progress so far on judicial reform has been limited and could take years to reach the appeal courts and first-instance courts. The judiciary's desire for self-preservation has coincided with the desire of the Presidential Administration (the government body responsible for judicial reform) to retain influence over the courts. The formation of a new Supreme Court, the expected influx of a new generation of judges to replace the large numbers who have left the profession since 2014, and the requirement for judges to declare their assets and income nevertheless hold promise that the culture of the judiciary may start to change and that it will adopt higher professional standards.

In addition, the remaining parts of the criminal justice system are in urgent need of overhaul. Any further deceleration of judicial reform, if accompanied by delays to efforts to scale back the functions of the PGO, is likely to leave the NABU and the SAPO politically isolated and at risk of losing credibility with the public. The Ukrainian public urgently needs to see criminal convictions. To consolidate progress, CSOs and international donors will need to stand their ground. The politically active part of Ukrainian society will need to remain mobilized against the 'old' system's efforts to retain power, and will need to challenge the latter's efforts to allow only partial 'Europeanization' of Ukraine's institutions.

Further progress in reducing corruption will ultimately depend on the interaction of several factors. To begin with, it will be essential to maintain the momentum for preventing and deterring corruption by strengthening the culture of transparency and prosecuting those who have defrauded the state. To do this will require, as noted above, the establishment of anti-corruption courts or, at the least, a new part of the judicial system competently staffed and free from external interference. The security of judges and whistle-blowers will need serious consideration.

At the same time, the overhaul of the law enforcement agencies needs to continue. The culture of the NABU and the SAPO will have to be gradually transplanted into the

new investigations agency, the SBI, and eventually into an entirely revamped PGO shorn of its investigative functions and resistant to political interference. Police reform must continue along the lines that led to the creation of the patrol police. This will require establishing a new ethos within the police service and raising salaries.

Clearly, parts of this agenda will depend on successful civil service reform and the development of a new culture within public administration. This will not be possible without raising salaries, in order to reduce the necessity for officials to extract bribes. Reforms must extend to the healthcare and education sectors, where corrupt practices are the norm. Improvement in these sectors is particularly important for the credibility of the anti-corruption agenda because public-sector health and education professionals have the most frequent contact with the public.

Properly conducted privatization of SOEs as well as deregulation and simplification of the business environment will further reduce the space for corruption, and will contribute significantly to the ease of doing business. Business, for its part, must improve corporate governance and increase transparency. This is particularly necessary in state-owned companies, which stand to benefit from the appointment of foreign non-executive directors.

The results of anti-corruption reforms in Romania and Bulgaria provide two contrasting examples that Ukraine's reformers should consider

The biggest unknown in this process is the future development of Ukraine's 'deep state', the powerful interests that captured so much of its politics, government machinery and economic life before 2014. Bloodied and weakened by Euromaidan, it has retreated and partially regrouped. Its economic model is no longer sustainable, and logic dictates that the development of a larger and more powerful lobby of SMEs will cause its influence to diminish further. The prospect of new political parties appearing that are not business projects, and that genuinely connect society with its representatives, has the potential to further empower democracy, transforming the political process and the conduct of government.

For the moment, the anti-corruption effort is at an embryonic stage. It could be slowed down or partially reversed. The deeper the reforms start to penetrate, the more resistance they are likely to encounter, making it essential that civil society remains engaged and that foreign donors continue to apply conditionality to their support of the government.

The results of anti-corruption reforms in Romania and Bulgaria provide two contrasting examples that Ukraine's reformers should consider. In Romania, following the collapse of communism, it took more than 22 years for the authorities to imprison the first senior government official for a corruption offence. Since that time, the picture has improved: the Romanian anti-corruption agency has energetically pursued hundreds of high-level officials, many of whom have gone to jail. Yet resistance within the system remains, and as the demonstrations of early 2017 showed, Romanian society remains deeply dissatisfied with the ruling party's attempts to insulate itself from anti-corruption investigations. By contrast, the situation in Bulgaria is far bleaker. Powerful economic interests, allied with organized crime, have strangled efforts to reduce corruption, deterring investment and slowing economic growth. The speed and effectiveness of anti-corruption reforms in the 1990s in Estonia, as compared with the much less successful efforts in Latvia, also provide important lessons that are applicable to Ukraine.

Ukraine does not have the luxury of time. Without a perceptible breakthrough in reducing corruption, investors will continue to stay away, social discontent will rise, and the country risks becoming politically and economically unstable. With political will, anti-corruption reforms need not be a Sisyphean task and can make this scenario avoidable.

8. Recommendations

To strengthen security

- The West's goal must be to ensure that Ukraine has the capacity to preserve its independence and territorial integrity, irrespective of Russian wishes or intentions. In this collective undertaking, Ukraine bears primary responsibility and must shoulder the principal burden. This requires political will and demonstrable progress in upholding standards of good governance in key security and political institutions.
- Ukraine must understand that internal transformation is a prerequisite both to national security and to Euro-Atlantic integration. The establishment of an effective, trusted and accountable state is a primary national interest. Unless law enforcement, security and defence institutions are fit for purpose, the country will remain dangerously vulnerable to infowar, penetration, sabotage and destabilization.
- Russia's military options must be curtailed and its effective capabilities against Ukraine reduced. To this end, a structure of deterrence is needed inside Ukraine, not only on the eastern border of NATO. The basis for deciding which weapons to supply Ukraine should be effectiveness rather than politics. Modern weaponry from the West will not overcome the ills of a largely unreformed defence system.
- NATO and the EU should, respectively, launch security sector and law enforcement advisory programmes in Ukraine, commensurate with NATO's existing efforts in the defence sphere.
- There is no contradiction between dialogue and defence. The West must work inside and outside the Normandy Format and Minsk process to resolve the conflict between Ukraine and Russia and strengthen European security. The Minsk agreements of 2014 and 2015 – which aimed to establish a political solution – should not be abandoned, but deadlock should not become a pretext for diluting their core provisions: a comprehensive ceasefire, the withdrawal of foreign forces and heavy weapons from occupied territories in Donbas, and unimpeded access for monitors from the Organization for Security and Co-operation in Europe (OSCE). Verified implementation of these security components must precede implementation of the political segment of the Minsk protocols.
- The West's sanctions against Russia should be periodically reviewed, strengthened where necessary, and kept in place however long the illegal annexation of the Crimean peninsula lasts and destabilization of the east of the country continues. Full restoration of Ukraine's internationally recognized borders should not be compromised.

To advance EU integration

- The EU must have realistic expectations of how long it will take for Ukraine to reform. The EU must maintain strong conditionality in the long term to stimulate real, rather than partial or cosmetic, reforms. Ukraine must recognize that integration is impossible without delivery of political and economic transformation.

- The EU's Support Group for Ukraine (SGUA) has been a particularly successful innovation in policy towards Ukraine. The SGUA has matched the supply of expertise to need. The EU should rely on this tailored and agile mechanism when planning assistance for Ukraine.
- The EU's support should move away from classic, pre-scripted technical assistance projects – the effectiveness of which is very low – to tailored, more flexible and longer-term programmes of at least four to five years in duration. The EU should consider using some instruments that have been successfully deployed in Romania (and learn lessons from failure in Bulgaria) to support the rule of law and judicial reforms.
- Support for Ukrainian businesses, especially small and medium-sized enterprises, is needed to help them withstand competitive pressures once the transition periods for the Deep and Comprehensive Free Trade Agreement (DCFTA) finish. This gap remains a major weakness in the EU's strategy towards Ukraine (especially at the regional level), and contrasts with the support available to EU accession candidate countries.

To boost economic and political reform

- Land reform – allowing and facilitating a functioning market for land – is badly needed to ensure that Ukraine's large but low-productivity agricultural sector is a powerhouse for longer-term economic growth. There are indications that the Ukrainian government will partially lift a moratorium on land sales by the end of 2017.
- Further reform of Ukraine's more than 3,000 state-owned enterprises is essential. Efforts should focus on three areas: improving the corporate governance of strategic entities identified as likely to remain in state ownership; privatizing the remaining enterprises and assets for which there is a ready market; and closing the rest. Reform should also include the sale of over 10 million hectares of agricultural land currently in state ownership, which could potentially raise big sums for the state budget.
- Civil society and the international community should place as much stress on electoral and institutional reform as on anti-corruption measures, to encourage a break with the old system and allow a new generation of genuine reformers to shape laws and policies. Wider use of institutional exchanges between Ukrainian government entities and EU member state governments will encourage best practice in administration and better policy formulation and implementation.
- Building public trust is of critical importance. Responsibility for this lies first and foremost with the Ukrainian political class, which needs to convince the population and Ukraine's foreign friends and partners that there is serious political will to reform the corrupt political system. Civil society can help to do this 'from the top', by joining forces with reformers in the legislature and executive. Civil society also needs to work from the 'bottom up' to ensure that citizens can engage in their country's governance and exercise civic oversight. Active citizenship could help establish a larger and more reformist political class in the future. Unless Ukrainian politicians, judges and civil servants accept the need for their system to change fundamentally – through the creation of robust institutions, genuine safeguards against corruption, and true political

and legal accountability – old habits will continue, Western partners will grow weary, and Russia will continue to be able to undermine the country's territorial integrity, politics and future sustainability.

- Western donors should integrate requirements for wider popular participation into their grant-making. They should fund projects that build civic support networks. They should promote action-based rather than adversarial revolutionary activism. The expansion of housing associations, farmers' unions, credit unions, teachers' associations and business associations would make decentralization of power more effective and local government more accountable.
- Through international development assistance, Western partners must assist Ukrainian NGOs and nascent political parties, as well as universities and management schools, in the creation of a new political and managerial class.
- Western countries must sustain pressure for judicial reform and the prosecution of high-level officials who have abused their office. There must be continued pressure for progress towards zero tolerance of corruption at all levels. The establishment of a special trial court or chamber free from political interference is essential for further progress in the battle against corruption and the development of a new legal culture. The appeal system must be similarly independent. Any signs of backtracking on these issues must be addressed robustly. An independent judiciary is the ultimate test of Ukraine's reforms.
- To maintain the momentum of the anti-corruption effort, the government must speed up privatization of state-owned enterprises using transparent tender procedures. Further deregulation should also be a high priority, in order to reduce opportunities for officials to extort money from business.
- Ukraine's anti-corruption reformers must communicate their achievements to society and address the perception that 'nothing has changed' since 2014. Important progress has been made on reducing the space for corruption, but the Ukrainian public is generally not aware of these changes.

Abbreviations and Acronyms

AA	EU–Ukraine Association Agreement
AA-DCFTA	EU–Ukraine Association Agreement and Deep and Comprehensive Free Trade Agreement
AMC	Anti-Monopoly Committee
AMRO	Asset Management and Recovery Office
ATM	Autonomous Trade Measures
ATO	Anti-Terrorist Operation
ATP	Autonomous Trade Preferences
BPP	Bloc of Petro Poroshenko
CEC	Central Electoral Commission
CIS	Commonwealth of Independent States
CPLR	Centre of Policy and Legal Reform
CSO	civil society organization
DCFTA	Deep and Comprehensive Free Trade Agreement
DG NEAR	European Commission Directorate-General for Neighbourhood and Enlargement Negotiations
DPR	Donetsk People's Republic
EFF	Extended Fund Facility
EIB	European Investment Bank
EUAM	European Union Advisory Mission to Ukraine
FTA	free-trade agreement
GDP	gross domestic product
GOEI	Governmental Office for European Integration
HQCJ	High Qualification Commission of Judges
IDP	internally displaced person
IMF	International Monetary Fund
LPR	Luhansk People's Republic
MEDT	Ministry of Economic Development and Trade
MP	member of parliament
MOD	Ministry of Defence
MOF	Ministry of Finance
NABU	National Anti-Corruption Bureau of Ukraine
NAPC	National Agency for Prevention of Corruption
NBU	National Bank of Ukraine
NGO	non-governmental organization
NTU	National TV and Radio Broadcasting Company
OLAF	European Anti-Fraud Agency [Office européen de lutte antifraude]
ORDLO	Separate Districts of Donetsk and Luhansk Oblasts (Regions)
OSCE	Organization for Security and Co-operation in Europe
PCA	Partnership and Cooperation Agreement
PGO	Prosecutor General's Office
PIC	Public Integrity Council
PPP	purchasing-power parity
RPR	Reanimation Package of Reforms
SAPO	Specialized Anti-Corruption Prosecutor's Office
SBI	State Bureau of Investigation
SBU	Security Service of Ukraine
SFS	State Fiscal Service
SGUA	Support Group for Ukraine

SMEs	small and medium-sized enterprises
SOE	state-owned enterprise
UKROP	Association of Patriots of Ukraine
USAID	United States Agency for International Development

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About the Ukraine Forum

The Ukraine Forum at Chatham House is a unique research centre and platform for debate. Launched in July 2015 in response to the challenges with transformation in Ukraine and subsequent Western engagement, the Forum provides insight for European audiences on internal Ukrainian dynamics. It offers diverse perspectives from government, the private sector and civil society.

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